ANTHONY SMITH ET AL. *v.* WILLIAM J. RUDOLPH ET AL.
(SC 20008)

Palmer, McDonald, Robinson, Mullins and Kahn, Js.*

Syllabus

Pursuant to statute (§ 52-556), any person injured "through the negligence" of a state employee while that employee is operating a motor vehicle owned and insured by the state "shall have a right of action against the state to recover damages for such injury."

The named plaintiff, S, brought an action pursuant to § 52-556 to recover damages from the defendant state Department of Transportation as a result of a motor vehicle accident that occurred when a bus owned by the state and operated by a state employee collided with a vehicle that S was driving. After S claimed the case to the jury trial list, the defendant filed a motion to strike the case from that list on the ground that a jury trial was not authorized by § 52-556. The trial court granted the motion, and the case was tried to the court, which rendered judgment for S and awarded damages. S appealed, claiming that the trial court incorrectly determined that § 52-556 did not afford him the right to a jury trial. *Held* that, because there is no right to a jury trial for an action brought under § 52-556, the trial court properly struck S's case from the jury trial list: a right to a jury trial cannot be implied in a statute waiving sovereign immunity but must be affirmatively expressed therein, and § 52-556 does not expressly provide for a right to a jury trial; moreover, the legislature could have, and likely would have, expressed its intention in § 52-556 to grant the right to a jury trial in cases brought pursuant to that statute if it had desired to grant such a right, as it had in another statute (§ 13a-144) waiving the state's sovereign immunity in highway defect cases; furthermore, even though § 52-556 uses the word "negligence," which

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

merely served to address the circumstance under which the legislature waived sovereign immunity, there was no right to a jury trial for a negligence action against the state prior to the adoption in 1818 of the state constitutional guarantee of such a right because the doctrine of sovereign immunity barred such an action, and there was no merit to the plaintiff's claim that simply because there previously have been jury trials without objection in cases brought pursuant to § 52-556 that a jury trial is authorized in such cases.

Argued March 27—officially released September 11, 2018

Procedural History

Action to recover damages for personal injuries sustained by the named plaintiff as a result of the named defendant's alleged negligence, brought to the Superior Court in the judicial district of New Britain, where the claims against the named defendant were withdrawn and where the claim of the plaintiff Marilyn Smith against the defendant state Department of Transportation was dismissed; thereafter, the court, *Abrams*, *J.*, granted the department's motion to strike the plaintiff's case from the jury docket; subsequently, the case was tried to the court, *Young*, *J.*; judgment for the named plaintiff, from which the named plaintiff appealed. *Affirmed.*

William J. Melley III, with whom was *Gary A. Friedle*, for the appellant (named plaintiff).

Edward P. Brady III, with whom, on the brief, was *Catherine M. Blair*, for the appellee (defendant state Department of Transportation).

Jonathan Hasbani and *Daniel P. Scholfield* filed a brief for the Connecticut Trial Lawyers Association as amicus curiae.

Opinion

PALMER, J. This appeal requires us to determine whether there is a right to a jury trial in an action

brought pursuant to General Statutes § 52-556,[1] which waives sovereign immunity for claims arising from a state employee's negligent operation of a state owned motor vehicle. The named plaintiff, Anthony Smith,[2] commenced this action, pursuant to § 52-556, against the defendant Department of Transportation,[3] seeking damages stemming from an accident that occurred when a bus owned and operated by the state collided with a vehicle that the plaintiff was driving. After the plaintiff claimed the action to the jury trial list, the defendant filed a motion to strike the case from that list on the ground that a jury trial is not authorized by § 52-556. The trial court granted the defendant's motion, and a trial to the court ensued, following which the court rendered judgment for the plaintiff, awarding him damages. The plaintiff appeals[4] from that judgment, claiming that the trial court incorrectly determined that § 52-556 does not afford him the right to a jury trial. Relying on the established principle that a common-law negligence action carries with it the right to a jury trial, the plaintiff maintains that, even though § 52-556 does not expressly provide for a jury trial, that provision

[1] General Statutes § 52-556 provides: "Any person injured in person or property through the negligence of any state official or employee when operating a motor vehicle owned and insured by the state against personal injuries or property damage shall have a right of action against the state to recover damages for such injury."

[2] The named plaintiff's wife, Marilyn Smith, also was a party to this action. Her loss of consortium claim against the named defendant, William J. Rudolph, was withdrawn and her remaining loss of consortium claim against the defendant Department of Transportation was dismissed. In the interest of simplicity, we refer to Anthony Smith as the plaintiff throughout this opinion.

[3] Because all of the claims asserted against the named defendant, William J. Rudolph, previously were withdrawn, the Department of Transportation is the sole remaining defendant in this action. In the interest of simplicity, we refer to the Department of Transportation as the defendant throughout this opinion.

[4] The plaintiff appealed to the Appellate Court from the judgment of the trial court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

constitutes a waiver of sovereign immunity that permits such an action against the state, thereby entitling him to a trial by jury. The defendant contends that § 52-556 does not give rise to a common-law negligence claim but, rather, creates a new cause of action, unknown at common law, such that the plaintiff has no right to a jury trial. We agree with the defendant, and, accordingly, we affirm the judgment of the trial court.

The record reveals the following undisputed facts and procedural history. On October 23, 2012, the plaintiff was driving to work when his vehicle was struck by a bus owned by the state and operated by a state employee, who was driving the bus within the scope of his employment. The accident occurred when the operator drove the bus through a red light at the intersection of West Main Street and South High Street in the city of New Britain and collided with the plaintiff's vehicle as the plaintiff, who had a green light, was lawfully negotiating a left turn at that intersection. The plaintiff's vehicle was damaged, and the plaintiff sustained injuries to his neck, back and legs.

The plaintiff sought damages stemming from the bus operator's alleged negligence, and, subsequently, the plaintiff claimed the case for a jury trial. The defendant moved to strike the case from the jury docket on the ground that no jury trial was authorized under § 52-556. Thereafter, the trial court, *Abrams*, *J.*, granted the defendant's motion and ordered the case transferred from the jury list to the court trial list. The plaintiff filed a motion for reconsideration of the trial court's decision, which the court denied. Thereafter, the court issued a memorandum of decision explaining why the plaintiff was not entitled to a jury trial. The plaintiff then filed a notice of intention to appeal that from that decision. Following a court trial, the trial court, *Young*, *J.*, rendered judgment for the plaintiff and awarded

damages in the amount of $31,953.12. This appeal followed.[5]

On appeal, the plaintiff claims that the trial court improperly struck the case from the jury docket because § 52-556 authorizes a trial by jury. The plaintiff argues that the statute is a waiver of sovereign immunity that permits an action long recognized at common law—one sounding in ordinary negligence—to be brought against the state. In support of this contention, the plaintiff maintains that the legislature, by including the word "negligence" in the statute, intended to incorporate the substantive legal principles that govern such common-law actions, including the right to a jury trial, which, this court has determined, is guaranteed under article first, § 19, of the Connecticut constitution.[6] In response, the defendant contends that the right to a jury trial cannot be implied in a statute waiving sovereign immunity but, rather, must be affirmatively expressed in the statutory language. We agree with the defendant that, because § 52-556 does not expressly provide for a right to a jury trial, the trial court properly struck the plaintiff's case from the jury docket.[7]

As a preliminary matter, we set forth the legal principles that govern our resolution of the plaintiff's claim. Whether there is a right to a jury trial under § 52-556

[5] After this appeal was filed, we granted the application of the Connecticut Trial Lawyers Association to file an amicus curiae brief in support of the plaintiff's claim.

[6] Article first, § 19, of the Connecticut constitution provides: "The right of trial by jury shall remain inviolate."

[7] The plaintiff also claims that the activity in which the bus operator was engaged when the accident occurred, namely, driving a bus, implicates a ministerial duty for which there is no sovereign immunity. The plaintiff cannot prevail on this claim for two reasons. First, there is nothing in the trial court record or in the record before us to rebut the defendant's contention that this claim was not advanced in the trial court, and, therefore, it is not properly preserved. Second, in contrast to principles governing governmental or municipal liability, we never have recognized an exception to sovereign immunity predicated on a ministerial duty.

presents an issue of statutory interpretation, over which we exercise plenary review. See, e.g., *Perry* v. *Perry*, 312 Conn. 600, 622, 95 A.3d 500 (2014). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning [General Statutes] § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Rivers* v. *New Britain*, 288 Conn. 1, 10–11, 950 A.2d 1247 (2008).

The general principles governing sovereign immunity are well established. "[W]e have long recognized the validity of the common-law principle that the state cannot be sued without its consent . . . ." (Internal quotation marks omitted.) *Cox* v. *Aiken*, 278 Conn. 204, 211, 897 A.2d 71 (2006). "[A] litigant that seeks to overcome the presumption of sovereign immunity [pursuant to a statutory waiver] must show that . . . the legislature, either expressly or by force of a necessary implication, statutorily waived the state's sovereign immunity . . . . In making this determination, [a court shall be guided by] the well established principle that statutes in dero-

gation of sovereign immunity should be strictly construed. . . . [When] there is any doubt about their meaning or intent they are given the effect which makes the least rather than the most change in sovereign immunity. . . . Furthermore, because such statutes are in derogation of the common law, [a]ny statutory waiver of immunity must be narrowly construed . . . and its scope must be confined strictly to the extent the statute provides." (Citation omitted; internal quotation marks omitted.) *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, 301 Conn. 268, 288–89, 21 A.3d 759 (2011).

In determining whether there is a right to a jury trial in an action brought under § 52-556, we are mindful that article first, § 19, of the state constitution "has been consistently construed by Connecticut courts to mean that if there was a right to a trial by jury at the time of the adoption of the provision, then that right remains intact." (Internal quotation marks omitted.) *Skinner* v. *Angliker*, 211 Conn. 370, 373–74, 559 A.2d 701 (1989). Thus, "in determining whether a party has a right to a trial by jury under the state constitution . . . the court must ascertain whether the action being tried is similar in nature to an action that could have been tried to a jury in 1818 when the state constitution was adopted. This test requires an inquiry [into] whether the [cause] of action has roots in the common law, and, if so, whether the remedy involved was one in law or equity. If the action existed at common law and involved a legal remedy, the right to a jury trial exists, and the legislature may not curtail that right either directly or indirectly." Id., 375–76. Significantly, however, this court has also determined that, "to entitle one to a right to a jury trial, it is not enough that the nature of the plaintiff's action is legal rather than equitable; the action must also be brought *against a defendant who was*

suable at common law in [*1818*]." (Emphasis added; internal quotation marks omitted.) Id., 378.

Thus, in *Canning* v. *Lensink*, 221 Conn. 346, 603 A.2d 1155 (1992), we concluded that there is no right to a jury trial in a wrongful death action brought pursuant to General Statutes (Rev. to 1987) § 19a-24 against the Commissioner of Mental Retardation and his employees in their official capacity, explaining that, "because the doctrine of sovereign immunity barred actions against the state prior to the adoption of the state constitution in 1818, *there is no constitutional right of jury trial in civil actions based on statutes effectively waiving such immunity in particular situations*." (Emphasis added.) Id., 353. We proceeded to explain, moreover, that, when a statute waiving sovereign immunity does not either expressly preclude the right to a jury trial or provide for that right, "we have concluded that the legislature intended that the action should be tried without a jury."[8] Id., 354. This is because, "[w]hen the state, by statute, waives its immunity to suit . . . *the right to a jury trial cannot be implied but, rather, must be affirmatively expressed*." (Emphasis added.) *Skinner* v. *Angliker*, supra, 211 Conn. 381; accord *Canning* v. *Lensink*, supra, 354.

Turning to the relevant statutory language in the present case, we observe that § 52-556 provides that "[a]ny person injured in person or property through the negligence of any state official or employee when operating a motor vehicle owned and insured by the state against

[8] In *Canning*, the court distinguished statutes waiving sovereign immunity that are silent with respect to the right to a jury trial from those that expressly preclude such a right; see, e.g., General Statutes § 4-61 (a) (requiring court trial in actions against state on highway and public works contracts); General Statutes § 4-160 (f) (requiring court trial in actions against state authorized by claims commissioner); and from those that expressly provide for such a right; see General Statutes § 13a-144 (permitting plaintiff to elect jury trial in action to recover damages for injuries sustained on state highways or sidewalks). See *Canning* v. *Lensink*, supra, 221 Conn. 354.

personal injuries or property damage shall have a right of action against the state to recover damages for such injury." The statute neither expressly grants nor precludes the right to a jury trial. See *Rodriguez* v. *State*, 155 Conn. App. 462, 470 n.8, 110 A.3d 467 ("§ 52-556 appears to contain no language, express or implied, that grants a right to a jury trial to a claimant seeking to recover under its provisions"), cert. granted, 316 Conn. 916, 113 A.3d 71 (2015) (appeal withdrawn December 15, 2015). The only language in § 52-556 that even arguably may be read to reflect an intent by the legislature to provide for a jury trial is the term "negligence," but, at the very most, such a legislative intent may only be *implied* by the use of that term. As we have explained, we will construe a statute waiving sovereign immunity as providing for a right to a jury trial only if that right is granted expressly; language that may be construed as containing an implied grant of that right will not suffice. See *Skinner* v. *Angliker*, supra, 211 Conn. 381.

Indeed, the language of § 52-556 stands in marked contrast to at least one other statute that waives sovereign immunity—the state's highway defect statute, General Statutes § 13a-144—in which the legislature expressly provided for the right to a jury trial. If the legislature intended for § 52-556 to include the right to a jury trial, the legislature could have, and likely would have, included such a provision in the statute. See, e.g., *State* v. *Heredia*, 310 Conn. 742, 761, 81 A.3d 1163 (2013) ("[w]hen a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed" [internal quotation marks omitted]); see also *State* v. *Bush*, 325 Conn. 272, 290, 157 A.3d 586 (2017) ("[w]e are not permitted to supply statutory language that the legislature may have chosen to omit" [internal quotation

marks omitted]). Moreover, the plaintiff cites to no legislative history, and we have found none, that supports his contention. Accordingly, and mindful of the general principle that we are to strictly construe waivers of sovereign immunity so as to make the least, rather than the greatest, change in that immunity; see, e.g., *Housatonic Railroad Co.* v. *Commissioner of Revenue Services*, supra, 301 Conn. 289; we agree with the defendant that there is no right to a jury trial for actions brought under § 52-556. See *Skinner* v. *Angliker*, supra, 211 Conn. 381.

In arguing to the contrary, the plaintiff relies on *Babes* v. *Bennett*, 247 Conn. 256, 721 A.2d 511 (1998), for the proposition that, "[b]ecause the language of § 52-556 expressly waives the state's immunity from suit based on common-law negligence, it appears that the legislature intended § 52-556 to incorporate the principles governing existing common-law negligence actions, and that the statute was not intended to create a separate statutory action to which different principles of liability and damages would apply." Id., 263–64. In reliance on this language, the plaintiff asserts that the legislature, in enacting § 52-556, intended that the substantive rules governing negligence actions generally would apply to actions brought under § 52-556, including, in particular, the right to a jury trial guaranteed by article first, § 19, of the Connecticut constitution. We are not persuaded by this argument. As we have explained, prior to 1818, there was no right to a jury trial for a negligence action against the state because the doctrine of sovereign immunity barred such an action, and, consequently, "there is no constitutional right of jury trial in civil actions based on statutes effectively waiving such immunity in particular situations." *Canning* v. *Lensink*, supra, 221 Conn. 353.

Moreover, the legislature's use of the word "negligence" in § 52-556 merely addresses the circumstance

under which the legislature has waived sovereign immunity but does not purport to confer the right to a jury trial. In other words, in enacting § 52-556, the legislature simply sought to waive the immunity otherwise available to the state for the negligence of certain of its employees, nothing more and nothing less. Our conclusion in this regard finds support in a case recently decided by the Appellate Court. See *Perez* v. *University of Connecticut*, 182 Conn. App. 278, A.3d (2018). In *Perez*, the Appellate Court was required to determine whether General Statutes § 4-159 (c),[9] which authorizes the legislature to permit certain claims to be brought against the state, entitled Christian Perez, the plaintiff in that negligence action, to a jury trial because that provision contains language indicating generally that the state should be held liable as if it "were . . . a private person . . . ." General Statutes § 4-159 (c); see *Perez* v. *University of Connecticut*, supra, 288. In rejecting the contention that Perez had a right to a jury trial, Judge Prescott explained that § 4-159 (c) "merely addresses the standard under which the General Assembly will decide whether to waive sovereign immunity"; *Perez* v. *University of Connecticut*, supra, 288; and was not intended to serve "as a grant to [Perez] of all the rights he would have had if the action [had been] brought against a private person rather than the state," including the right to a trial by jury. Id., 289. We reach the same conclusion in the present case.

Finally, the plaintiff asserts that "[n]umerous cases have been brought against state employees or officials for negligent operation of a motor vehicle since the earliest enactment of . . . § 52-556" and that "[m]any

[9] General Statutes § 4-159 (c) provides: "The General Assembly may grant the claimant permission to sue the state under the provisions of this section when the General Assembly deems it just and equitable and believes the claim to present an issue of law or fact under which the state, were it a private person, could be liable."

of these cases have permitted a jury trial." Contrary to the suggestion of the plaintiff, however, the mere fact that some cases brought under § 52-556 have been tried to a jury does not mean that a jury trial is authorized thereunder. In those cases, both the court and the parties may have *assumed* that § 52-556 grants that right, but any such assumption is irrelevant for purposes of our analysis. More important, the plaintiff cites no instances in which a case brought pursuant to § 52-556 proceeded to a jury trial *after* a motion to strike the claim from the jury trial list had been filed. We therefore find no merit in the plaintiff's claim that § 52-556 entitles him to a jury trial simply because other cases brought pursuant to that provision have been tried—without objection—to a jury.

For the foregoing reasons, we conclude that there is no right to a jury trial for an action brought under § 52-556. Accordingly, the trial court properly struck the present action from the jury trial list so that the case would be tried to the court.

The judgment is affirmed.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* EDWARD TAUPIER (SC 19950)

Palmer, McDonald, Robinson, D'Auria, Mullins, Kahn and Vertefeuille, Js.*

Syllabus

Convicted, following a trial to the court, of threatening in the first degree, breach of the peace in the second degree, and disorderly conduct in connection with the sending of an e-mail containing threatening statements directed toward a Superior Court judge, B, the defendant appealed, claiming, inter alia, that the statements in the e-mail were protected speech under both federal and state constitutions. The defen-

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

dant had represented himself in a marital dissolution action and, after having enrolled his children in a certain school in violation of a court order, received copies of certain motions in that action from an attorney representing his wife. Thereafter, the defendant sent an e-mail to, among other people, N and V, criticizing the family court and stating that "[t]hey can steal my kids from my cold dead bleeding cordite filled fists . . . as my [sixty] round [magazine] falls to the floor . . . ." The e-mail then accurately stated that "[B] lives in [a certain town] with her boys and [n]anny" and that "there [are] 245 [yards] between [B's] master bedroom and a cemetery that provides cover and concealment . . . ." The e-mail further stated that "a [.308 caliber rifle] at 250 [yards] with a double pane drops [one-half inch] per foot beyond the glass and loses [7 percent] of [foot pounds] of force [at] 250 [yards] . . . ." In response, N sent an e-mail to the defendant characterizing his statements as "disturbing" and instructing him to refrain from sending such communications in the future. The defendant then responded by sending a second e-mail suggesting that he was contemplating violence against B and her family. After reading the defendant's first e-mail, V immediately communicated her concern about it to several people and, a few days later, sent a screenshot of that e-mail to an attorney who informed Judicial Branch officials and the state police, which, in turn, informed B. During their investigation, the police entered the defendant's residence pursuant to a warrant and seized fifteen firearms and multiple rounds of ammunition. The police examined these firearms and determined that four were capable of accurately firing a projectile 245 yards. At the defendant's criminal trial, B testified that, as a result of the defendant's threats, she upgraded the security at her home, warned officials at her children's school, had judicial marshals escort her from her office to her car each evening, and had the state police surveil her home for several days. The trial court denied the defendant's motion to dismiss the charges, rejecting his claim that the first degree threatening statute (§ 53a-61aa [a] [3]) was unconstitutional because it required the state to prove recklessness when the first amendment to the United States constitution required proof of a specific intent to terrorize B. The trial court subsequently found the defendant guilty, concluding, inter alia, that the language in the defendant's first e-mail constituted a true threat and that the defendant had consciously disregarded a substantial and unjustifiable risk that it would be disclosed to others and cause terror to B. On appeal from the trial court's judgment of conviction, *held*:

1. The defendant could not prevail on his claim that § 53a-61aa (a) (3) is unconstitutional under the free speech provisions of the federal and state constitutions because that statute did not require the state to prove that the defendant, in threatening to commit a crime of violence, had the specific intent to terrorize B.

   a. The standard of recklessness under § 53a-61aa (a) (3), which requires the state prove that a speaker was aware of and consciously disregarded

a substantial and unjustifiable risk that the target of the speaker's threat would be terrorized, comported with the first amendment, insofar as it applied to threatening speech directed at a private individual; this court concluded, consistent with cases from other jurisdictions, that the United States Supreme Court's decision in *Virginia* v. *Black* (538 U.S. 343) did not hold that a specific intent to threaten is required in order to communicate a true threat and did not purport to preclude the punishment of threatening speech under the first amendment when a reasonable person would interpret such speech as a serious threat.

b. The free speech provisions of the state constitution did not require the state to prove, under § 53a-61aa (a) (3), that the speaker had the specific intent to terrorize the target of the threatening speech, insofar as those provisions applied to threatening speech directed at a private individual; this court examined the factors set forth in *State* v. *Geisler* (222 Conn. 672) for determining the contours of the protections provided by the state constitution, and concluded that this state's case law did not suggest that the state is constitutionally required to tolerate threatening speech when the speaker recklessly disregards a substantial and unjustifiable risk that the speech would be interpreted as a serious threat.

c. The first amendment did not require a higher mens rea for threatening speech directed at a public official, this court having concluded that such speech is not constitutionally protected when the traditional true threats doctrine has been satisfied; moreover, the defendant's claim that his first e-mail constituted a protected remonstrance under article first, § 14, of the Connecticut constitution could not be reconciled with his claim that he did not intend for B to receive that e-mail, and lacked merit because that constitutional provision is expressly limited to redress sought in a peaceable manner.

2. The defendant failed to establish that the trial court's consideration of evidence regarding certain events that occurred after the defendant sent his first e-mail, in support of the court's conclusion that he violated § 53a-61aa (a) (3), constituted reversible error.

a. The trial court improperly considered evidence that the police had seized firearms from the defendant's home approximately one week after he sent his first e-mail to support the court's conclusion that the defendant violated § 53a-61aa (a) (3), as neither the recipients of that e-mail nor B knew that the defendant actually possessed firearms when they received or became aware of the e-mail, and, therefore, that fact could have no bearing on whether they would interpret the e-mail as a serious threat; nevertheless, the defendant failed to prove that the impropriety was harmful, as the other evidence supporting the trial court's conclusion that the defendant had violated § 53a-61aa (a) (3) was extremely strong, including the detailed and disturbing language in the defendant's first e-mail, the reactions of B, N, and V to that e-mail, the defendant's extreme animosity toward the family court system, the

contentious history between the defendant and B in family court, and the events immediately preceding the sending of the e-mail.

b. The trial court did not abuse its discretion in considering the defendant's second e-mail to N to support its conclusion that the defendant was aware that there was a significant and unjustifiable risk that his first e-mail would be interpreted as a serious threat; the trial court reasonably could have concluded that the contents of the second e-mail were relevant to the issue of whether the defendant was aware when he sent the first e-mail that it would be interpreted in that manner, as the court could have inferred that, if the defendant had been unaware when he sent the first e-mail that it would be interpreted as a serious threat, he would have reacted differently to N's characterization of the e-mail as "disturbing" and N's instruction to the defendant to refrain from sending such communications in the future.

3. The evidence was sufficient to establish, beyond a reasonable doubt, that the defendant had committed the crimes of threatening in the first degree and disorderly conduct.

a. The evidence was sufficient to support the defendant's conviction of threatening in the first degree, as the evidence established that the defendant was aware of a substantial and unjustifiable risk that the recipients of his first e-mail would interpret it as a serious threat in light of the language in that e-mail, which conveyed the clear connotation that the defendant was seriously contemplating violence against B, the reactions of N, V, and B to the first e-mail, the history between the defendant and B, the immediately preceding events, and evidence that the defendant's demeanor throughout the course of the divorce proceedings had been contentious and adversarial to all court personnel involved in the case; moreover, there was no merit to the defendant's claim that the evidence was insufficient to establish that he was aware that there was a substantial and unjustifiable risk that B would be terrorized by the first e-mail because he did not send it to her, this court having concluded that threatening speech need not be communicated directly to its target in order to constitute a punishable true threat, and, because the language of the defendant's first e-mail was so extreme, there was no credible evidence that would support a finding that the defendant had reason to believe that all of the recipients of the e-mail would either support or be indifferent to a serious threat to kill a Superior Court judge.

b. The evidence was sufficient to support the defendant's conviction of disorderly conduct directed at V; this court concluded that when, as in the present case, a speaker communicates a true threat to a person other than the target of the threat, and there is no evidence that the speaker believed that the recipient would share or be indifferent to the speaker's desire to inflict violence on the target, the communication constitutes offensive conduct and creates a substantial and unjustifiable risk that the recipient will be inconvenienced, annoyed or alarmed.

Argued January 25, 2018—officially released September 11, 2018

Procedural History

Amended information charging the defendant with one count each of the crimes of threatening in the first degree, threatening in the second degree, and breach of the peace in the second degree, and two counts of the crime of disorderly conduct, brought to the Superior Court in the judicial district of Hartford and transferred to the judicial district of Middlesex, where the court, *Gold*, *J.*, denied the defendant's motion to dismiss; thereafter, the case was tried to the court, *Gold*, *J.*; judgment of guilty of one count each of the crimes of threatening in the first degree and breach of the peace in the second degree, and two counts of the crime of disorderly conduct, from which the defendant appealed. *Affirmed*.

Norman A. Pattis, with whom, on the brief, was *Daniel Erwin*, for the appellant (defendant).

Mitchell S. Brody, senior assistant state's attorney, with whom, on the brief, was *Peter A. McShane*, state's attorney, and *Brenda L. Hans*, assistant state's attorney, for the appellee (state).

Opinion

ROBINSON, J. The principal issue in this appeal is whether the free speech provisions of the first amendment to the United States constitution[1] and article first, §§ 4, 5 and 14, of the Connecticut constitution[2] require

[1] The first amendment to the United States constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[2] Article first, § 4, of the Connecticut constitution provides: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

Article first, § 5, of the Connecticut constitution provides: "No law shall ever be passed to curtail or restrain the liberty of speech or of the press."

Article first, § 14, of the Connecticut constitution provides: "The citizens have a right, in a peaceable manner, to assemble for their common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address or remonstrance."

the state to prove that a defendant has a specific intent to terrorize another person in order to sustain a conviction of threatening in the first degree under General Statutes § 53a-61aa (a) (3),[3] which criminalizes threatening speech. The defendant, Edward Taupier, sent an e-mail containing threats of violence against a judge of the Superior Court, Elizabeth A. Bozzuto, to a group of acquaintances. The defendant now appeals[4] from the judgment, rendered after a trial to the court, convicting him of threatening in the first degree in violation of § 53a-61aa (a) (3), two counts of disorderly conduct in violation of General Statutes § 53a-182 (a) (2),[5] and breach of the peace in the second degree in violation of General Statutes § 53a-181 (a) (3). On appeal, the defendant claims that (1) the trial court improperly denied his motion to dismiss the charge of threatening

[3] General Statutes § 53a-61aa (a) provides in relevant part: "A person is guilty of threatening in the first degree when such person . . . (3) commits threatening in the second degree as provided in section 53a-62, and in the commission of such offense such person uses or is armed with and threatens the use of or displays or represents by such person's words or conduct that such person possesses a pistol, revolver, shotgun, rifle, machine gun or other firearm . . . ." We note that the legislature has amended § 53a-61aa since the events underlying the present appeal. See, e.g., Public Acts 2016, No. 16-67, § 6. Those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

General Statutes (Rev. to 2013) § 53a-62 (a), in turn, provides: "A person is guilty of threatening in the second degree when . . . (3) such person threatens to commit [any] crime of violence in reckless disregard of the risk of causing . . . terror . . . ." We note that the legislature has also made certain amendments to § 53a-62 that are not relevant to the present appeal. See, e.g., Public Acts 2016, No. 16-67, § 7 (changing internal designations). For the sake of consistency with the record in the present case, all references to § 53a-62 in this opinion are to the 2013 revision of the statute.

[4] The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[5] General Statutes § 53a-182 (a) provides: "A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person . . . (2) by offensive or disorderly conduct, annoys or interferes with another person . . . ."

in the first degree under § 53a-61aa (a) (3) on the ground that the statute is unconstitutional because it did not require the state to prove that he had the specific intent to terrorize Judge Bozzuto,[6] (2) the trial court improperly considered evidence of events that occurred after he sent the threatening e-mail to support its conclusion that he violated that statute, and (3) the evidence was insufficient to establish beyond a reasonable doubt that he violated §§ 53a-61aa (a) (3) and 53a-182 (a) (2). We disagree with the defendant's claims and, accordingly, affirm the judgment of the trial court.

The record reveals the following procedural history and facts that the trial court found or that are undisputed. In 2012, the defendant's wife, Tanya Taupier, initiated an action to dissolve their marriage. Among the contested issues was the custodial status of the couple's two minor children. In August, 2013, the trial court, *Carbonneau*, *J.*, ordered that the children reside with Tanya Taupier and attend school in Ellington, where she resided.

In the spring of 2014, Judge Bozzuto, who was responsible for managing the docket of the family court in Hartford, became involved in the defendant's dissolution proceeding. Judge Bozzuto assumed sole responsibility for the management of the case in order to ensure that it would be adjudicated in a timely manner.

On May 23, 2014, Judge Bozzuto ordered the Family Services Unit of the Court Support Services Division (family services unit) to conduct a comprehensive custody evaluation. Shortly thereafter, the family services

[6] To the extent that the defendant contends that none of the statutes under which he was convicted is constitutional as applied to threatening speech, he effectively concedes on appeal that, if this court concludes that his conduct in sending the e-mail constitutionally may be subject to punishment pursuant to § 53a-61aa (a) (3), the other criminal statutes under which he was charged are also constitutional as applied to him. Accordingly, we limit our analysis to the constitutionality of § 53a-61aa (a) (3).

unit informed Judge Bozzuto that the defendant was interfering with the evaluation by injecting his personal views and opinions concerning the family court system into the process. In response, on June 18, 2014, Judge Bozzuto conducted an in-court proceeding attended by the parties. Judge Bozzuto told the defendant that he was free to express his political beliefs and views of the family court system, but ordered him to refrain from doing so during interviews conducted by the family services unit.

On August 20, 2014, the defendant informed his wife that he had enrolled their children in school in Cromwell, where he resided, in violation of the court order that they attend school in Ellington. On August 22, 2014, counsel for Tanya Taupier sent the defendant drafts of a contempt motion and an application for an emergency ex parte order of custody that she planned to file in court. The defendant, who was representing himself in the divorce proceeding, then sought the advice of several acquaintances who had experience in family court, including Anne Stevenson and Michael Nowacki. At 11:24 p.m. that night, in response to e-mails that he had received from Stevenson, Nowacki, and Jennifer Verraneault regarding the court motions, the defendant sent an e-mail containing threatening statements toward Judge Bozzuto to Stevenson, Nowacki, Susan Skipp, Sunny Kelley, Paul Boyne, and Verraneault, all of whom had been engaged with the defendant for some time in efforts to reform the family court system. Specifically, the defendant's e-mail contained the following statements: (1) "[t]hey can steal my kids from my cold dead bleeding cordite filled fists . . . as my [sixty] round [magazine] falls to the floor and [I'm] dying as I change out to the next [thirty rounds]"; (2) "[Bo]zzuto lives in [W]atertown with her boys and [n]anny . . . there [are] 245 [yards] between her master bedroom and a cemetery that provides cover and concealment"; and (3) "a [.308 caliber rifle] at 250 [yards] with a double

pane drops [one-half inch] per foot beyond the glass and loses [7 percent] of [foot pounds] of force [at] 250 [yards]—nonarmor piercing ball ammunition . . . .'"[7]

In response to the defendant's e-mail, on the morning of August 23, 2014, Nowacki sent an e-mail to the defendant stating: "Ted, [t]here are disturbing comments made in this [e-mail]. You will be well served to NOT send such communications to anyone." The defendant then sent another e-mail to Nowacki and Boyne in which he again suggested that he was contemplating violence against Judge Bozzuto and her family.[8] In turn, Nowacki

[7] This e-mail reads as follows: "Facts: JUST an FYI . . . .

"[1] [I'm] still married to that POS . . . we own our children, there is no decision . . . its 50/50 or whatever we decide. The court is dog shit and has no right to shit they don't have a rule on.

"[2] They can steal my kids from my cold dead bleeding cordite filled fists . . . as my [sixty] round [magazine] falls to the floor and [I'm] dying as I change out to the next [thirty rounds] . . . .

"[3] [Bo]zzuto lives in [W]atertown with her boys and [n]anny . . . there [are] 245 [yards] between her master bedroom and a cemetery that provides cover and concealment.

"[4] They could try and put me in jail but that would start the ringing of a bell that can be undone . . . .

"[5] Someone wants to take my kids better have an [F-35 fighter jet] and smart bombs . . . otherwise they will be found and adjusted . . . they should seek shelter on the ISS ([international] space station) . . . .

"[6] BTW a [.308 caliber rifle] at 250 [yards] with a double pane drops [one-half inch] per foot beyond the glass and loses [7 percent] of [foot pounds] of force [at] 250 [yards]—nonarmor piercing ball ammunition . . . .

"[7] Mike may be right . . . unless you sleep with level [three] body armor or live on the ISS you should be careful of actions.

"[8] Fathers do not cause cavities, this is complete bullshit.

"[9] Photos of children are not illegal . . . .

"[10] Fucking [n]annies is not against the law, especially when there is no fucking going on, just ask [Bo]zzuto . . . she is the ultimate [n]anny fucker."

[8] The defendant's second e-mail reads as follows: "Hi Mike . . . the thoughts that the courts want to take my civil rights away is equally disturbing, I did not have children, to have them abused by an illegal court system.

"My civil rights and those of my children and family will always be protected by my breath and hands.

"I know where she lives and I know what I need to bring about change . . . .

sent the defendant an e-mail stating the following: "Violence is not a rational response to injustice. Please refrain from communicating with me if you are going to allude to violence as a response."

After reading the defendant's first e-mail on August 23, 2014, Verraneault immediately communicated her concern about it to several people. On the afternoon of August 27, 2014, Verraneault learned of an incident earlier in the day during which Tanya Taupier had gone with a police escort to the school in Cromwell in which the defendant had enrolled their children and removed

"These evil court assholes and self appointed devils will only bring about an escalation that will impact their personal lives and families.

"When they figure out they are not protected from bad things and their families are taken from them in the same way they took yours then the system will change.

"This past week in [Ferguson] there was a lot of hurt caused by an illegal act, if it were my son, shot, there would be an old testament response.

"[Second] amendment rights are around to keep a police state from violating my [family's] rights.

"If they—courts . . . need sheeeple they will have to look elsewhere. If they feel it's disturbing that I will fiercely protect my family with all my life . . . they would be correct, I will gladly accept my death and theirs protecting my civil rights under my uniform code of justice.

"They do not want me to escalate . . . and they know I will gladly . . . .

"I've seen years of fighting go [unnoticed], people are still suffering . . . . Judges still fucking sheeple over. Time to change the game.

"I don't make threats, I present facts and arguments. The argument today is what has all the energy that has expended done to really effect change, the bottom line is—insanity is defined as doing the [same thing] over and over and expecting a different outcome . . . we should all be done . . . and change the game to get results . . . that's what Thomas Jefferson wrote about constantly.

"Don't be disturbed . . . be happy there are new minds taking up a fight to change a system.

"Here is my daily prayer:

"I will never quit. I persevere and thrive on adversity.

"My [n]ation and [f]amily expects me to be physically harder and mentally stronger than my enemies.

"If knocked down, I will get back up, every time.

"I will draw on every remaining ounce of strength to protect my [family and] teammates and to accomplish our mission.

"I am never out of the fight . . . ." (Internal quotation marks omitted.)

them from the school. The defendant was present and recorded a video of the removal, while making a series of mocking comments to the police and Tanya Taupier. After learning of this incident, Verraneault feared that it might put the defendant "over the edge." Accordingly, despite fears that she harbored about her own safety if the defendant were to learn that she had disclosed his e-mail concerning Judge Bozzuto, on August 28, 2014, Verraneault sent a screenshot of the contents of the e-mail to an acquaintance who was an attorney, Linda Allard. After discussing the matter with Verraneault, Allard informed Judicial Branch officials and the state police about the e-mail and they, in turn, informed Judge Bozzuto.

Judge Bozzuto testified at trial that, after she learned about the e-mail, "every night when I [got] home . . . as soon as . . . I pull[ed] up to the driveway and pull[ed] in . . . every time I [got] out of that car I look[ed] up on the hill in the back where all the brush and trees are and [thought] of only [the defendant]. . . . [T]hose bumps in the night, it's when the dogs start[ed] barking in the middle of the night and the first thing that [came] to my mind [was the defendant]." As a result of the e-mail, she "did a massive upgrade of security at the house, installing cameras and lights." Judge Bozzuto also provided her children's school with a mug shot of the defendant and put school officials on alert. State police surveilled her house for a week or two after Judge Bozzuto learned about the e-mail, and judicial marshals escorted her from her office to her car in the evening. Judge Bozzuto also contacted a sister whose daughter was taking care of Judge Bozzuto's dogs, and told her not to let her daughter go to Judge Bozzuto's residence without a police escort.

The defendant was arrested in connection with his first e-mail and ultimately was charged with threatening in the first degree in violation of § 53a-61aa (a) (3);

threatening in the second degree in violation of General Statutes (Rev. to 2013) § 53a-62 (a) (3); two counts of disorderly conduct in violation of § 53a-182 (a) (2), one of which alleged that he caused inconvenience, annoyance and alarm to Judge Bozzuto, and one of which alleged that he caused inconvenience, annoyance and alarm to Verraneault; and breach of the peace in violation of § 53a-181 (a) (3).[9]

Before trial, the defendant moved to dismiss all of the charges. With respect to the threatening charges, the defendant contended that the e-mail did not contain speech that was punishable under the first amendment because the threat was not "so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution . . . ." (Internal quotation marks omitted.) *State* v. *Krijger*, 313 Conn. 434, 450, 97 A.3d 946 (2014). In addition, the defendant argued that the threatening charges "fail because the [d]efendant did not communicate the threat to the intended victim." In support of this claim, the defendant cited *State* v. *Kenney*, 53 Conn. App. 305, 323, 730 A.2d 119, cert. denied, 249 Conn. 930, 733 A.2d 851 (1999), for the proposition that "[a] threat imports the expectation of bodily harm, thereby inducing fear and apprehension *in the person threatened*." (Emphasis added; internal quotation marks omitted.) The trial court, *Gold*, *J.*,[10] summarily denied the motion to dismiss, and the case was tried to the court.

After the trial, the defendant filed another motion to dismiss the charges, claiming that the threatening

[9] All of the charges against the defendant arose from his conduct in sending the first e-mail, which, according to the trial court's factual findings, was the only e-mail that had been provided to law enforcement before the defendant's arrest and the only e-mail that came to the attention of Judge Bozzuto.

[10] All subsequent references to the trial court are to Judge Gold.

statutes under which he had been charged were unconstitutional because they required the state to prove only that his conduct in sending the e-mail was in reckless disregard of causing terror to another person; see General Statutes § 53a-61aa (a) (3) and General Statutes (Rev. to 2013) § 53a-62 (a) (3); when, according to the defendant, the first amendment requires proof of specific intent to terrorize another person. The defendant pointed out that, although this court in *State* v. *Krijger*, supra, 313 Conn. 450, had applied an objective foreseeability standard to determine whether the defendant had made a "true threat" that may be subject to punishment under the first amendment, we had expressly declined to consider whether the first amendment required proof of a specific intent because the defendant in *Krijger* had raised no such claim and, in any event, he could prevail even under the objective standard.

Relying on Justice Alito's concurring opinion in *Elonis* v. *United States*, U.S. , 135 S. Ct. 2001, 2016–17, 192 L. Ed. 2d 1 (2015), the trial court concluded that the state was constitutionally required to prove that the defendant acted recklessly, that is, that the defendant subjectively knew that there was a substantial and unjustifiable risk that his threatening speech would terrorize the target of the threat, and that he acted in conscious disregard of that risk. See General Statutes § 53a-3 (13).[11] Accordingly, the trial court concluded that § 53a-61aa (a) (3), which requires proof of recklessness, was not unconstitutional and denied the defendant's motion to dismiss.

[11] General Statutes § 53a-3 (13) provides: "A person acts 'recklessly' with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation . . . ."

Thereafter, the trial court found the defendant guilty of threatening in the first degree, two counts of disorderly conduct, and breach of the peace in the second degree. In its memorandum of decision, the trial court considered separately the questions of whether (1) the language of the defendant's e-mail constituted a true threat that constitutionally could be punished, and (2) the defendant had knowingly disregarded the risk that the e-mail would cause Judge Bozzuto to be terrorized. With respect to the first issue, the trial court observed that, under *State* v. *Krijger*, supra, 313 Conn. 450, threatening speech constitutionally may be punished when "a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault." (Internal quotation marks omitted.) The trial court ultimately concluded that "a reasonable person not only *could* foresee, but readily *would* foresee, that the language in the [defendant's] e-mail would be interpreted by those to whom it was communicated as a serious expression of an intent to commit an act of violence [against] Judge Bozzuto . . . ." In support of this conclusion, the trial court relied on the e-mail's extremely detailed and specific description of the threatened assault on Judge Bozzuto, the prior relationship between the parties, the circumstances immediately preceding the e-mail, and the fact that firearms that could enable the defendant to carry out his threat were seized from the defendant's residence approximately one week after he sent the e-mail.

The trial court then addressed the question of whether the state had proved the elements of threatening in the second degree in violation of § 53a-62 (a) (3). The trial court disagreed with the defendant's claims that the state had failed to prove that he acted recklessly because "(1) he did not send the e-mail directly to Judge Bozzuto, and (2) those to whom he did send it were seen

by him as 'like-minded individuals' who understood and shared his frustration with the family court system." The trial court found that, to the contrary, the evidence "fully support[ed] the reasonable inference that the defendant knew that his e-mail would be seen as a serious expression of his intentions, and was aware of and consciously disregarded the substantial and unjustifiable risk that, as a result, it would be disclosed to others and cause terror to Judge Bozzuto." To support this conclusion, the trial court again relied on the words used in the e-mail, the history between the parties, and the reactions of Nowacki and Verraneault. In addition, the trial court relied on the fact that, upon being admonished by Nowacki for sending the e-mail, the defendant expressed no surprise that Nowacki had interpreted the e-mail as a serious threat of violence and made no attempt to clarify his intent or retract the threat. Rather, the defendant validated Nowacki's interpretation by sending another e-mail reasserting the threat to Judge Bozzuto and, for the first time, threatening her children. Accordingly, the trial court found that the state had established the elements of threatening in the second degree.

The trial court then noted that, with regard to the charge of threatening in the first degree in violation of § 53a-61aa (a) (3), the state was required to prove that the defendant had committed threatening in the second degree and, in committing that offense, had represented by his words that he possessed a firearm. The trial court concluded that the defendant's reference in the e-mail to the .308 caliber rifle satisfied that element. Accordingly, the trial court found the defendant guilty of threatening in the first degree.

Turning to the other charges, the trial court concluded that the state had established the elements of disorderly conduct toward Judge Bozzuto and Verraneault. With respect to the count involving disorderly

conduct toward Verraneault, the trial court concluded that the defendant "was aware that she would view [the e-mail] as a serious expression of [the defendant's] intent to shoot Judge Bozzuto, and that . . . Verraneault would be disturbed and filled with anxiety as a result of that threatened harm." Finally, the trial court concluded that the state had proven the elements of breach of the peace in the second degree. Accordingly, the trial court found the defendant guilty on both counts of disorderly conduct and of breach of the peace in the second degree. The trial court then rendered a judgment of conviction in accordance with its findings and sentenced the defendant to a total effective sentence of five years imprisonment, execution suspended after eighteen months, and five years probation with special conditions on the charge of threatening in the first degree. This appeal followed. See footnote 4 of this opinion.

On appeal, the defendant first challenges the constitutionality of § 53a-61aa (a) (3) under the free speech provisions of the first amendment to the federal constitution and article first, §§ 4, 5 and 14, of the Connecticut constitution on the grounds that (1) the statute does not require the state to prove that an individual who engaged in threatening speech had the specific intent to terrorize the target of the threat, and (2) even if the statute is constitutional as applied to threatening speech directed at a private individual, proof of specific intent is required when the speech is directed at a public official. He next claims that the trial court improperly considered evidence of certain events, namely, the seizure of firearms from his residence one week after he sent the e-mail concerning Judge Bozzuto, and his second e-mail to Nowacki, in which he again threatened Judge Bozzuto and her family, to support its conclusion that his e-mail was a punishable true threat. Finally, the defendant contends that the evidence was insuffi-

cient to establish that he violated § 53a-61aa (a) (3) by sending the e-mail or that he violated § 53a-182 (a) (2) by engaging in disorderly conduct toward Verraneault. We address each of these claims in turn.

I

FREE SPEECH CLAIMS

We first address the defendant's claims that § 53a-61aa (a) (3) is unconstitutional under the free speech provisions of the first amendment to the United States constitution, and article first, §§ 4, 5 and 14, of the Connecticut constitution because the statute does not require the state to prove that the person who engaged in the threatening speech had the specific intent to terrorize the target of the threat.[12] We conclude in part I A of this opinion that the statutory recklessness standard is constitutional under the first amendment when threatening speech is directed at a private individual. In part I B of this opinion, we conclude that the statutory recklessness standard is also constitutional under the free speech provisions of the state constitution. In part I C of this opinion, we consider and reject the defendant's suggestion that a higher mens rea standard is required under both the federal and state constitutions when threatening speech is directed at a public official.[13]

[12] In his brief, the defendant contends that the trial court improperly applied *Krijger*'s objective foreseeability standard and that the court "altogether neglect[ed] the issue of scienter." The trial court did not neglect the issue of scienter, however, but applied the statutory recklessness standard, which it previously had concluded was constitutional. Nevertheless, because the defendant contends that the state and federal constitutions require the state to prove that he had the specific intent to terrorize Judge Bozzuto, that contention necessarily includes the position that the statutory recklessness standard is also unconstitutional.

[13] We note that the defendant did not preserve before the trial court his state constitutional claim or his claim suggesting that proof of specific intent is required when the threatening speech is directed at a public official. Accordingly, we review those claims pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), under which "a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim

We begin by noting the well established principle that determining the constitutionality of a statute presents a question of law subject to plenary review. See, e.g., *Kerrigan* v. *Commissioner of Public Health*, 289 Conn. 135, 155, 957 A.2d 407 (2008).

A

We first address the defendant's claim that the first amendment required the state to prove that he had the specific intent to terrorize Judge Bozzuto before he could be punished for the threatening speech in his e-mail.[14] As we have explained, in this part of our opinion, we limit our consideration to the federal constitutional standard for threatening speech directed at a private individual. We disagree with the defendant's claim.

We begin with a review of the first amendment principles applicable to statutes that criminalize threatening speech. "The [f]irst [a]mendment, applicable to the

of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the defendant's claim will fail." (Emphasis in original; internal quotation marks omitted.) *State* v. *Holley*, 327 Conn. 576, 590 n.8, 175 A.3d 514 (2018); see also *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015) (modifying *Golding*'s third prong).

[14] We recently stated in *State* v. *Kono*, 324 Conn. 80, 123, 152 A.3d 1 (2016), that, "if the federal constitution does not clearly and definitively resolve the issue in the defendant's favor, we turn first to the state constitution to ascertain whether its provisions entitle the defendant to relief." In *Kono*, however, the defendant *prevailed* on his claim under the state constitution. Id., 122. In the present case, we conclude that the defendant cannot prevail on his state constitutional claim. See part I B of this opinion. It is necessary, therefore, to consider his federal constitutional claim. Moreover, because a review of federal precedent is part of our state constitutional analysis under *State* v. *Geisler*, 222 Conn. 672, 685, 610 A.2d 1225 (1992), we address the defendant's claim under the federal constitution first for the sake of efficiency.

[s]tates through the [f]ourteenth [a]mendment, provides that Congress shall make no law . . . abridging the freedom of speech. The hallmark of the protection of free speech is to allow free trade [of] ideas—even ideas that the overwhelming majority of people might find distasteful or discomforting. . . . Thus, the [f]irst [a]mendment ordinarily denies a [s]tate the power to prohibit dissemination of social, economic and political doctrine [that] a vast majority of its citizens believes to be false and fraught with evil consequence. . . .

"The protections afforded by the [f]irst [a]mendment, however, are not absolute, and we have long recognized that the government may regulate certain categories of expression consistent with the [c]onstitution. . . . The [f]irst [a]mendment permits restrictions [on] the content of speech in a few limited areas, which are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. . . .

"Thus, for example, a [s]tate may punish those words [that] by their very utterance inflict injury or tend to incite an immediate breach of the peace. . . . Furthermore, the constitutional guarantees of free speech and free press do not permit a [s]tate to forbid or proscribe advocacy of the use of force or of law violation except [when] such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. . . . [T]he [f]irst [a]mendment also permits a [s]tate to ban a true threat. . . .

"True threats encompass those statements [through which] the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. . . . The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protect[s] individuals from the fear of violence and from

the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur. . . .

"Thus, we must distinguish between true threats, which, because of their lack of communicative value, are not protected by the first amendment, and those statements that seek to communicate a belief or idea, such as political hyperbole or a mere joke, which are protected." (Citation omitted; internal quotation marks omitted.) *State* v. *Krijger*, supra, 313 Conn. 448–50.

Until 2003, the objective foreseeability test, under which the state must prove that a reasonable person would interpret the defendant's threatening speech as a serious threat before the defendant may be punished for the speech, was universally acknowledged by federal courts as the proper constitutional standard for identifying punishable true threats under the first amendment. See *Doe* v. *Pulaski County Special School District*, 306 F.3d 616, 622 (8th Cir. 2002) ("[a]ll the [federal circuit courts of appeals] to have reached the issue have consistently adopted an objective test that focuses on whether a reasonable person would interpret the purported threat as a serious expression of an intent to cause a present or future harm"); see also *State* v. *DeLoreto*, 265 Conn. 145, 156, 827 A.2d 671 (2003) (under federal constitution, "[w]hether a particular statement may properly be considered to be a threat is governed by an objective standard—whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault" [internal quotation marks omitted]).

As we recognized in *State* v. *Krijger*, supra, 313 Conn. 451–52 n.10, however, this general consensus was shaken by the decision of the United States Supreme Court in *Virginia* v. *Black*, 538 U.S. 343, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003), which led to a split in authority

among the federal circuit courts of appeals about whether the true threats doctrine requires proof of subjective intent to intimidate the recipient of the threat or, instead, requires proof of objective foreseeability. In *Black*, the court considered the constitutionality of a Virginia statute providing in relevant part that "[i]t shall be unlawful for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway or other public place." (Internal quotation marks omitted.) Id., 348. In an opinion authored by Justice O'Connor, a majority of the court observed that " '[t]rue threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." Id., 359. The majority further observed that "[i]ntimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." Id., 360. Accordingly, the majority concluded that "[t]he [f]irst [a]mendment permits Virginia to outlaw cross burnings done with the intent to intimidate . . . ." Id., 363.

A plurality of the court also held, however, that a provision of the Virginia statute stating that "[a]ny such burning of a cross shall be prima facie evidence of an intent to intimidate a person or group of persons" was unconstitutional on its face because it did not differentiate between cross burnings that were intended to intimidate and other cross burnings and, therefore, "would create an unacceptable risk of the suppression of ideas."[15] (Internal quotation marks omitted.) Id., 363–66;

[15] Chief Justice Rehnquist and Justices Stevens and Breyer agreed with the portion of Justice O'Connor's opinion holding that the prima facie evidence provision was unconstitutional. The plurality noted, however, that the Supreme Court of Virginia had not authoritatively interpreted the meaning of the prima facie evidence provision, and it was theoretically possible that

see also id., 367 (provision "ignore[d] all of the contextual factors that are necessary to decide whether a particular cross burning *is intended to intimidate*" [emphasis added]).

As we observed in *State* v. *Krijger*, supra, 313 Conn. 451–52 n.10, several courts have concluded that the statement of the majority in *Virginia* v. *Black*, supra, 538 U.S. 360, that "a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death" constitutes a true threat as well as the statement of the plurality suggesting that the finder of fact must determine whether the defendant "intended to intimidate"; id., 367; show that the Supreme Court intended to adopt a specific intent standard.[16] Most of the courts that have addressed the issue,

"the court, on remand, could interpret the provision in a manner different from that so far set forth in order to avoid the constitutional objections we have described." *Virginia* v. *Black*, supra, 538 U.S. 367. Justice Scalia, who had provided the fifth vote in the majority, contended in his concurring and dissenting opinion, which Justice Thomas joined, that the prima facie evidence provision was constitutional because it allowed defendants to rebut the presumption of the intent to intimidate. See id., 370–71. Justice Souter contended in his concurring and dissenting opinion, in which Justices Kennedy and Ginsburg joined, that the entire cross burning statute was unconstitutional. See id., 387. Justice Thomas contended in a concurring and dissenting opinion that the prima facie evidence provision was constitutional. See id., 388.

[16] See *United States* v. *Heineman*, 767 F.3d 970, 980 (10th Cir. 2014) ("one of the predicates for the plurality's overbreadth ruling [in *Black*] was the [c]ourt's view that a threat was unprotected by the [f]irst [a]mendment only if the speaker intended to instill fear in the recipient"); id., 981 (if subjective intent is required to convict defendant of intimidation, it must be required for other types of true threats as well); *United States* v. *Bagdasarian*, 652 F.3d 1113, 1117–18 (9th Cir. 2011) (holding without analysis that *Black* adopted specific intent requirement); *Brewington* v. *State*, 7 N.E.3d 946, 964 (Ind. 2014) (stating in dictum that *Black* held that first amendment requires subjective intent to intimidate), cert. denied, U.S. , 135 S. Ct. 970, 190 L. Ed. 2d 834 (2015); see also *United States* v. *Parr*, 545 F.3d 491, 500 (7th Cir. 2008) (declining to decide whether *Black* adopted subjective intent standard, but stating in dictum that "[i]t is more likely . . . an entirely objective definition is no longer tenable"), cert. denied, 556 U.S. 1181, 129 S. Ct. 1984, 173 L. Ed. 2d 1083 (2009).

however, have held that *Black* did not overrule the objective foreseeability standard.[17] Several of these courts have reasoned that, although the court's statements in *Black* indicate that a speaker who has the specific intent to intimidate constitutionally may be punished for his speech, they do not support the proposition a speaker constitutionally may be punished *only* when he has a specific intent to intimidate. See *United States* v. *Martinez*, 736 F.3d 981, 987 (11th Cir. 2013) (under *Black*, "intimidation is but one type of true threat," and court did not intend to require specific intent to intimidate for all true threats), vacated on other grounds, U.S. , 135 S. Ct. 2798, 192 L. Ed. 2d 842 (2015); *United States* v. *Jeffries*, 692 F.3d 473, 480 (6th Cir. 2012) (stating that court in *Black* merely observed "that intimidation is *one* type of true threat" [emphasis in original; internal quotation marks omitted]), cert. denied, 571 U.S. 817, 134 S. Ct. 59, 187 L. Ed. 2d 25 (2013); *People* v. *Stanley*, 170 P.3d 782, 789

[17] See *United States* v. *Martinez*, 736 F.3d 981, 988 (11th Cir. 2013), vacated on other grounds, U.S. , 135 S. Ct. 2798, 192 L. Ed. 2d 842 (2015); *United States* v. *Elonis*, 730 F.3d 321, 329–30 (3d Cir. 2013), rev'd on other grounds, U.S. , 135 S. Ct. 2001, 192 L. Ed. 2d 1 (2015); *United States* v. *Jeffries*, 692 F.3d 473, 479–80 (6th Cir. 2012), cert. denied, 571 U.S. 817, 134 S. Ct. 59, 187 L. Ed. 2d 25 (2013); *United States* v. *White*, 670 F.3d 498, 508–509 (4th Cir. 2012); *United States* v. *Mabie*, 663 F.3d 322, 332 (8th Cir. 2011); *People* v. *Stanley*, 170 P.3d 782, 788 (Colo. App. 2007), cert. denied, Colorado Supreme Court, Docket No. 07SC575 (November 19, 2007), cert. denied, 552 U.S. 1297, 128 S. Ct. 1750, 170 L. Ed. 2d 541 (2008); *People* v. *Diomedes*, 13 N.E.3d 125, 137 (Ill. App. 2014), appeal denied, 39 N.E.3d 1006 (Ill. 2015); *State* v. *Draskovich*, 904 N.W.2d 759, 762 (S.D. 2017); *State* v. *Schaler*, 169 Wn. 2d 274, 283, 236 P.3d 858 (2010); see also *Elonis* v. *United States*, supra, 135 S. Ct. 2016 (Alito, J., concurring in part and dissenting in part) (statute requiring proof of recklessness in making threat was constitutional under first amendment); *Elonis* v. *United States*, supra, 2027 (Thomas, J., dissenting) ("[t]he [c]ourt's fractured opinion in *Black* . . . says little about whether an intent-to-threaten requirement is constitutionally mandated"); *United States* v. *Turner*, 720 F.3d 411, 420 and n.4 (2d Cir. 2013) (applying objective test and noting that defendant did not rely on split caused by *Black*, but concluding that result would be same under either objective or subjective test), cert. denied, U.S. , 135 S. Ct. 49, 190 L. Ed. 2d 29 (2014).

(Colo. App. 2007) (stating that court in *Black* merely defined intimidation as one type of true threat), cert. denied, Colorado Supreme Court, Docket No. 07SC575 (November 19, 2007), cert. denied, 552 U.S. 1297, 128 S. Ct. 1750, 170 L. Ed. 2d 541 (2008).

Several courts have also concluded that the plurality in *Black* held that the prima facie evidence provision of the cross burning statute was unconstitutional because the plurality was concerned that cross burning could be punished under that provision even when it was *not reasonably foreseeable* that anyone would be intimidated or terrorized, not because the statute failed to require proof of specific intent. Thus, these courts have reasoned, the plurality in *Black* was focused more on the Virginia cross burning statute's failure to differentiate between different levels of intent than on the specific mens rea that is constitutionally required before a person may be punished for threatening speech. See *United States* v. *Martinez*, supra, 736 F.3d 986–87 ("*Black* was primarily a case about the overbreadth of a specific statute—not whether all threats are determined by a subjective or objective analysis in the abstract"); *United States* v. *Jeffries*, supra, 692 F.3d 479–80 (*Black* "did not turn on subjective versus objective standards for construing threats. It turned on overbreadth—that the statute lacked any standard at all."); *United States* v. *White*, 670 F.3d 498, 511 (4th Cir. 2012) ("[w]hile the *Black* discussion was . . . concerned with the fact that criminalizing cross burning without proof of *any* intent to intimidate would be unconstitutional, the [c]ourt did not engage in any discussion that proving true threats . . . required a subjective, rather than objective, analysis" [emphasis in original]); *United States* v. *Mabie*, 663 F.3d 322, 332 (8th Cir. 2011) ("*Black* . . . did not hold that the speaker's subjective intent to intimidate or threaten is required in order for a communication to constitute a true threat. Rather, the

[c]ourt determined that the statute at issue in *Black* was unconstitutional because the intent element that was included in the statute was effectively eliminated by the statute's provision rendering any burning of a cross on the property of another prima facie evidence of an intent to intimidate.").

Finally, one state court that has rejected the claim that *Black* adopted a subjective intent requirement reasoned that the purpose underlying the true threats doctrine, namely, protecting the targets of threats from the fear of violence, would not be "served by hinging constitutionality on the speaker's subjective intent . . . ." (Internal quotation marks omitted.) *People* v. *Stanley*, supra, 170 P.3d 789, quoting *Planned Parenthood of Columbia/Willamette, Inc.* v. *American Coalition of Life Activists*, 290 F.3d 1058, 1076 (9th Cir. 2002), cert. denied, 539 U.S. 958, 123 S. Ct. 2637, 156 L. Ed. 2d 655 (2003).

We are persuaded by the reasoning of the courts that have concluded that *Black* did not adopt a subjective intent standard. Indeed, nothing in *Black* itself suggests that the court intended to overrule the preexisting consensus among the federal circuit courts of appeals that threatening speech may be punished under the first amendment when a reasonable person would interpret the speech as a serious threat. We also note that, in *State* v. *DeLoreto*, supra, 265 Conn. 154, this court cited *Black*, and we did not suggest that the decision had affected the objective foreseeability test in any way. Accordingly, we conclude that the first amendment does not require the state to prove that the defendant had the specific intent to terrorize Judge Bozzuto before he could be punished for his threatening speech.

Having rejected the defendant's claim that the first amendment requires proof of a subjective intent, we need not determine whether the objective foreseeability

standard, which requires the state to prove that "an objective listener would readily interpret the [threatening] statement as a real or true threat"; *State* v. *Krijger*, supra, 313 Conn. 460; but which does not require the state to prove that *the defendant subjectively knew* that the threat would be interpreted as a serious one, satisfies the first amendment. Even if we were to assume that proof of subjective knowledge is constitutionally required, § 53a-61aa (a) (3) satisfies that requirement because it requires the state to prove the element of reckless disregard, namely, that the defendant violated § 53a-62 (a) (3) by "threaten[ing] to commit [a] crime of violence in reckless disregard of the risk of causing . . . terror" to another person. Put another way, the state must show that the defendant was aware of and *consciously disregarded* a substantial and unjustifiable risk that the target of the threat would be terrorized. See General Statutes § 53a-3 (13). We conclude, therefore, that § 53a-61aa (a) (3) is constitutional under the first amendment as applied to threatening speech directed at a private individual.

B

We next address the defendant's claim that the free speech provisions of article first, § 4, 5 and 14, of the Connecticut constitution provide greater protection than does the first amendment, and require the state to prove that an individual had the specific intent to terrorize the target of the threat before that person may be punished for threatening speech directed at a private individual. Specifically, the defendant relies on this court's statement in *State* v. *Linares*, 232 Conn. 345, 380, 655 A.2d 737 (1995), that the state constitution "bestows greater expressive rights on the public than that afforded by the federal constitution." Accord *Leydon* v. *Greenwich*, 257 Conn. 318, 349, 777 A.2d 552 (2001). We again disagree and conclude that the Connecticut constitution does not require the state to prove

that a defendant had the specific intent to terrorize the target of the threat before that person may be punished for threatening speech directed at a private individual.

"[I]n determining the contours of the protections provided by our state constitution, we employ a multifactor approach that we first adopted in [*State* v. *Geisler*, 222 Conn. 672, 685, 610 A.2d 1225 (1992)]. The factors that we consider are (1) the text of the relevant constitutional provisions; (2) related Connecticut precedents; (3) persuasive federal precedents; (4) persuasive precedents of other state courts; (5) historical insights into the intent of [the] constitutional [framers]; and (6) contemporary understandings of applicable economic and sociological norms [otherwise described as public policies]. . . . We have noted, however, that these factors may be inextricably interwoven, and not every [such] factor is relevant in all cases." (Internal quotation marks omitted.) *State* v. *Kono*, 324 Conn. 80, 92, 152 A.3d 1 (2016).

In the present case, because neither the constitutional text nor the relevant federal case law supports his position,[18] the defendant relies primarily on the holdings and dicta of decisions from this state's appellate courts, in particular *State* v. *Linares*, supra, 232 Conn. 345, to support his claim that the state constitution requires proof of a specific intent to terrorize. We are not persuaded. In *Linares*, the defendant pleaded nolo contendere to charges of intentional interference with the legislative process in violation of General Statutes § 2-1d (a) (2) (C) and (E) in connection with an incident in which she unfurled a banner and loudly chanted in the gallery of the hall of the House of Representatives

[18] Although the defendant relies on the federal precedent *Geisler* factor, we concluded in part I A of this opinion that persuasive federal precedent does not require proof of subjective intent. Accordingly, that factor favors the state's position that the recklessness standard of § 53a-61aa (a) (3) comports with the state constitution.

during the governor's budget address. *State* v. *Linares*, supra, 347–54. The defendant contended that § 2-1d (a) (2) (C) and (E) was overbroad in violation of the speech provisions of the state constitution. Id., 376–77. To resolve this issue, this court was required to decide whether the state constitution incorporated the rigid forum analysis, which was the standard under the federal constitution, or, instead, the state constitution incorporated the "more flexible, fact specific [compatibility] approach," under which courts consider "whether the particular speech in issue was consistent with the uses of the specific public property involved." Id., 377–78. Noting that the more flexible compatibility approach "is designed to maximize the speech which the government is constitutionally required to tolerate, consistent with the appropriate and needful use of its property," this court concluded that the state constitution incorporated that approach. (Internal quotation marks omitted.) Id., 383–84.

Nothing in either *Linares* or *Leydon* v. *Greenwich*, supra, 257 Conn. 318, suggests, however, that the government is constitutionally required to tolerate threatening speech when the speaker acted in reckless disregard and was aware that there was a substantial and unjustifiable risk that the speech would be interpreted as a serious threat. Nor does the defendant contend that the other *Geisler* factors, namely, constitutional history and public policy, support his position. Accordingly, we conclude that § 53a-61aa (a) (3) does not violate the free speech provisions of the state constitution because those provisions protect a broader range of threatening speech than does the first amendment.

C

We next address the defendant's claim that threatening speech that is directed at a public official is subject to a higher standard than speech directed at a private

individual under the free speech provisions of both the federal and state constitutions. We disagree with both claims.

1

We first consider whether the first amendment imposes a higher mens rea standard on threatening speech directed at public officials. The defendant contends that, because a statute criminalizing political advocacy of the use of force or of lawlessness violates the first amendment unless "such advocacy is directed to inciting or producing *imminent* lawless action and is likely to incite or produce such action"; (emphasis added) *Brandenburg* v. *Ohio*, 395 U.S. 444, 447, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969); threatening speech directed at public officials is punishable only if the speaker had a specific intent to terrorize the official. He cites no authority for this proposition, however, and our independent research reveals that courts have uniformly concluded that, if threatening speech directed at a public official satisfies the traditional true threats doctrine, it is not constitutionally protected.[19]

[19] See *Watts* v. *United States*, 394 U.S. 705, 707, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969) (statute criminalizing threats against president was constitutional because "[t]he [n]ation undoubtedly has a valid, even an overwhelming, interest in protecting the safety of its [c]hief [e]xecutive and allowing him to perform his duties without interference from threats of physical violence"); *United States* v. *Bazuaye*, 559 Fed. Appx. 709, 714 (10th Cir. 2014) (when defendant made true threat against police officer, threat was not constitutionally protected speech); *United States* v. *Turner*, 720 F.3d 411, 423–24 (2d Cir. 2013) (statute criminalizing threats against judges was constitutional because first amendment does not protect true threats), cert. denied, U.S. , 135 S. Ct. 49, 190 L. Ed. 2d 29 (2014); *United States* v. *Beale*, 620 F.3d 856, 865–66 (8th Cir. 2010) (statute criminalizing threats against judicial officers of United States was constitutional because first amendment does not protect true threats), cert. denied, 562 U.S. 1190, 131 S. Ct. 1023, 178 L. Ed. 2d 847 (2011); *United States* v. *Wolff*, 370 Fed. Appx. 888, 893 (10th Cir. 2010) ("[t]he fact that a specific threat accompanies pure political speech does not shield a defendant from culpability" [internal quotation marks omitted]); *United States* v. *Fulmer*, 108 F.3d 1486, 1493 (1st Cir. 1997) (when defendant was charged with threatening federal agent, "a conviction . . . based on a finding that the statement was a true threat would not violate [the

We emphasize that courts must carefully scrutinize the evidence in cases involving charges of threats against public officials to ensure that the speech at issue was, in fact, a true threat, and not constitutionally protected political advocacy. See *Watts* v. *United States*, 394 U.S. 705, 707, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969) (threatening statute "must be interpreted with the commands of the [f]irst [a]mendment clearly in mind" and "[w]hat is a threat must be distinguished from what is constitutionally protected speech"); see also *United States* v. *Turner*, 720 F.3d 411, 420 and n.4 (2d Cir. 2013) (distinguishing between advocacy of violence, which is constitutionally protected speech, and true threats, which are not), cert. denied, U.S. , 135 S. Ct. 49, 190 L. Ed. 2d 29 (2014). If the evidence establishes beyond a reasonable doubt, however, that the defendant's threatening speech was "so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution"; (internal quotation marks omitted) *State* v. *Krijger*, supra, 313 Conn. 450; and that the defendant had the constitutionally required mens rea for true threats directed at private individuals, we cannot perceive why his speech should, nevertheless, be protected because it was directed at a public official. Unlike passionate disagreement with existing

defendant's] constitutionally protected right to [political] speech"); *People* v. *Nishi*, 207 Cal. App. 4th 954, 965, 143 Cal. Rptr. 3d 882 (2012) (statute criminalizing threats against executive officers of state was constitutional because first amendment does not protect true threats), review denied, California Supreme Court, Docket No. 07SC575 (October 17, 2012); *State* v. *Draskovich*, 904 N.W.2d 759, 764 (S.D. 2017) (upholding conviction of charge of threatening courthouse employees and judge because speech constituted true threat); *Ex parte Eribarne*, 525 S.W.3d 784, 785 (Tex. App. 2017) (statute criminalizing threats directed at public servants was constitutional because "the statute punishes conduct rather than the content of speech alone and bears a rational relationship to the [s]tate's legitimate and compelling interest in protecting public servants from harm"), review refused, Texas Court of Criminal Appeals, Docket No. PD-0901-17 (October 25, 2017).

laws and abstract advocacy of the violent overthrow of the government, true threats have no social value. See *State* v. *DeLoreto*, supra, 265 Conn. 163 ("[t]rue threats have no communicative value but, rather, are words [used] as projectiles where no exchange of views is involved" [internal quotation marks omitted]); cf. *Rice* v. *Paladin Enterprises, Inc.*, 128 F.3d 233, 243 (4th Cir. 1997) ("[A] right to advocate lawlessness is, almost paradoxically, one of the ultimate safeguards of liberty. Even in a society of laws, one of the most indispensable freedoms is that to express in the most impassioned terms the most passionate disagreement with the laws themselves, the institutions of, and created by, law, and the individual officials with whom the laws and institutions are entrusted."), cert. denied, 523 U.S. 1074, 118 S. Ct. 1515, 140 L. Ed. 2d 668 (1998). Accordingly, we conclude that § 53a-61aa (a) (3) is not unconstitutional as applied to threatening speech directed at public officials under the first amendment.

2

We next address the defendant's contention that the free speech provisions of the Connecticut constitution require the state to prove that the defendant had a specific intent to terrorize when threatening speech is directed at public officials. In support of this claim, the defendant relies on the text of article first, § 14, of the Connecticut constitution, which provides that citizens have a right "to apply to those invested with the powers of government, for redress of grievances . . . by petition, address or remonstrance." The defendant contends that his e-mail regarding Judge Bozzuto was a "remonstrance" within the meaning of this provision and, therefore, it was constitutionally protected. We disagree.

Without additional analysis explicating the term "remonstrance," we find it difficult to reconcile the

defendant's claim that the purpose of his e-mail was "to apply to those invested with the powers of government, for redress of grievances" with his contention that he did not intend for Judge Bozzuto to receive the e-mail. In any event, article first, § 14, of the Connecticut constitution expressly guarantees the right to apply to government officials for the redress of grievances only if the redress is sought "in a peaceable manner . . . ." A statement that is a true threat would, ipso facto, not be one seeking redress in a peaceable manner. Accordingly, we conclude that the constitutional framers did not intend to protect the right to seek redress from a public official by way of a "remonstrance" when the speaker was aware that there was a substantial and unjustifiable risk that the public official would interpret the "remonstrance" as a serious threat of violence. We conclude, therefore, that § 53a-61aa (a) (3) is constitutional under the state constitution as it is applied to threatening speech directed at public officials.

II

EVIDENTIARY CLAIMS

We next address the defendant's claim that the trial court improperly admitted evidence of events that occurred *after* he sent the e-mail to support its conclusion that the defendant violated § 53a-61aa (a) (3). Specifically, he contends that the trial court improperly admitted (1) evidence that firearms were seized from the defendant's residence one week after he sent the e-mail, and (2) the defendant's second e-mail to Nowacki, in which he reiterated his threats against Judge Bozzuto, because this evidence was irrelevant. We agree with the defendant's first claim, but conclude that the impropriety was harmless. We disagree, however, with his second claim.

Before turning to the defendant's evidentiary claims, we note that he has cast them as sufficiency of the

evidence claims, predicated on the trial court's improper consideration of the challenged evidence. Because the defendant's arguments, in essence, attack the relevancy of the challenged evidence when considered by the trial court as the trier of fact, we view those claims as evidentiary in nature. The defendant has not, however, indicated how these evidentiary claims were preserved for review. Nevertheless, because the state does not object on preservation grounds, and because the defendant cannot prevail on the claims in any event, we review their merits. See *Blumberg Associates Worldwide, Inc.* v. *Brown & Brown of Connecticut, Inc.*, 311 Conn. 123, 157–58, 84 A.3d 840 (2014) ("[r]eview of an unpreserved claim may be appropriate . . . when . . . the party who raised the unpreserved claim cannot prevail" [citation omitted; footnote omitted]).

"Our standard of review for evidentiary claims is well settled. To the extent [that] a trial court's admission of evidence is based on an interpretation of the Code of Evidence, our standard of review is plenary. For example, whether a challenged statement properly may be classified as hearsay and whether a hearsay exception properly is identified are legal questions demanding plenary review. . . . We review the trial court's decision to admit [or exclude] evidence, if premised on a correct view of the law, however, for an abuse of discretion. . . . The trial court has wide discretion to determine the relevancy of evidence and the scope of cross-examination. . . . Thus, [w]e will make every reasonable presumption in favor of upholding the trial court's [rulings on these bases]." (Citations omitted; internal quotation marks omitted.) *State* v. *Davis*, 298 Conn. 1, 10–11, 1 A.3d 76 (2010). Because the defendant in the present case contends that the trial court improperly admitted evidence of events that occurred after the defendant sent the threatening e-mail on the ground

that the evidence was irrelevant, we review the trial court's action for abuse of discretion.

A

We first address the defendant's claim that the trial court improperly considered evidence that firearms were seized from his home approximately one week after he sent the threatening e-mail to support its conclusion that the defendant violated § 53a-61aa (a) (3). The record reveals the following additional relevant facts. The state presented evidence that, during their investigation of the defendant, the police obtained a "risk warrant" pursuant to General Statutes § 29-38c, authorizing them to enter the defendant's residence and to seize any firearms and ammunition that they found there. Upon executing the warrant, the police found and seized fifteen firearms and multiple rounds of ammunition. The police subsequently learned that, in March, 2013, the family court had issued an order prohibiting the defendant from possessing any firearms. In accordance with that order, the defendant had surrendered a number of firearms to a friend. When the police went to that friend's residence on September 2, 2014, he confirmed that he had received thirteen firearms from the defendant in March, 2013. During the summer of 2014, however, the defendant had indicated that he wanted them back. On August 27, 2014, five days after sending the e-mail, the defendant went to his friend's residence and retrieved six of the firearms. The friend turned over the remaining firearms to the police. Thereafter, the police examined the fifteen firearms that had been seized from the defendant's residence and determined that four of them were capable of accurately firing a projectile 245 yards, the distance to which the defendant had referred in his e-mail. The trial court concluded that, under *State* v. *Krijger*, supra, 313 Conn. 456 n.11, it could rely on this evidence to support a

finding that the defendant "possessed the skills or wherewithal necessary to carry out [his] threat." Id.

In *Krijger*, however, this court concluded only that *knowledge by the target of a threat* that the defendant had the means to carry out the threat can support the inference that the target would reasonably interpret the threat to be serious. See id. We did not suggest that the same inference may be drawn when the defendant had the means to carry out the threat, but the target was unaware of that fact. In this regard, we emphasize that § 53a-61aa (a) (3) does not allow a person to be punished for a thought—namely, having the subjective intent to carry out a threat. Rather, it allows threatening speech to be punished when the speaker was aware that there was substantial and unjustifiable risk that the speech *would be interpreted* as a serious threat of violence, regardless of the speaker's actual intentions. See *Virginia* v. *Black*, supra, 538 U.S. 360 ("a prohibition on true threats protect[s] individuals from the fear of violence and from the disruption that fear engenders" [internal quotation marks omitted]); *Roberts* v. *State*, 78 Ark. App. 103, 108, 78 S.W.3d 743 (2002) (essence of threat is "communication"). Because there is no evidence in the present case that either the recipients of the e-mail or Judge Bozzuto knew that the defendant actually possessed firearms when they received the e-mail, that fact could have no bearing on whether they would interpret the e-mail as a serious threat.[20] Accordingly, we conclude that the trial court improperly admitted this evidence.

[20] Judge Bozzuto testified that, when she received the copy of the defendant's e-mail, she was aware that the family court previously had issued an order requiring the defendant to surrender all of his weapons. She also testified that, when she read the e-mail, she "took it that he had a weapon." There is no evidence, however, that Judge Bozzuto had any reason other than the reference in the e-mail to a .308 caliber rifle to believe that the defendant possessed weapons in violation of the family court order.

We also conclude, however, that the defendant has failed to prove that the impropriety was harmful. As we discuss more fully in part III of this opinion, the other evidence supporting the trial court's conclusion that the defendant violated § 53a-61aa (a) (3), including the extremely detailed and disturbing language of the defendant's e-mail, the reactions of Nowacki and Verraneault, Judge Bozzuto's reaction, the defendant's extreme animosity toward the family court system, with which he interacted primarily through Judge Bozzuto, the contentious history between the defendant and Judge Bozzuto, and the events immediately preceding the sending of the e-mail, was extremely strong. See *State* v. *Swinton*, 268 Conn. 781, 797–98, 847 A.2d 921 (2004) ("to establish reversible error on an evidentiary impropriety, the defendant must prove both an abuse of discretion and a harm that resulted from such abuse" [internal quotation marks omitted]); see also *State* v. *Mitchell*, 296 Conn. 449, 460, 996 A.2d 251 (2010) (harmfulness determination must be made in light of entire record including overall strength of state's case without evidence admitted in error). Accordingly, we conclude that the evidentiary impropriety in the admission of the firearms evidence was harmless and, therefore, does not require reversal of the defendant's conviction.

B

The defendant also claims that the trial court improperly relied on his second e-mail to Nowacki to support the conclusion that the defendant was aware that there was a significant and unjustifiable risk that his initial e-mail would be interpreted as a serious threat. Specifically, the trial court concluded that the fact that the defendant expressed no surprise that Nowacki had interpreted the e-mail as a serious threat of violence and made no attempt to clarify his intent or retract the threat but, instead, reiterated his threats against Judge Bozzuto and also threatened her children, showed that

the defendant was aware that his first e-mail would be interpreted as a serious threat. The defendant again contends that the trial court should have considered only the circumstances that existed at the time that the defendant sent the first e-mail when determining whether that e-mail contained a serious threat.

This court, however, has expressly recognized that "evidence of the conduct of a defendant subsequent to the commission of a crime is admissible to show the defendant's state of mind at the time of the crime." (Internal quotation marks omitted.) *State* v. *Croom*, 166 Conn. 226, 230, 348 A.2d 556 (1974). Although the defendant's second e-mail to Nowacki had no bearing on the question of whether the *recipients* of the first e-mail would have interpreted it as a serious threat, the trial court reasonably could have concluded that it was relevant to the issue of whether *the defendant was aware* when he sent the first e-mail that it would be interpreted in that manner. Specifically, the trial court reasonably could have inferred that, if the defendant had been unaware when he sent the first e-mail that it would be interpreted as a serious threat, he would have reacted quite differently to Nowacki's characterization of the e-mail as "disturbing" and his admonition to the defendant to refrain from making such statements. We conclude, therefore, that the trial court did not abuse its discretion when it considered this evidence.

III

SUFFICIENCY OF THE EVIDENCE CLAIMS

A

We next address the defendant's contention that the evidence was insufficient to convict him of threatening in the first degree in violation of § 53a-61aa (a) (3). Specifically, the defendant contends that the state failed to satisfy the constitutional requirement that (1) it was

objectively foreseeable that the e-mail would be interpreted as a serious threat, and (2) it was reasonably foreseeable that Judge Bozzuto would be terrorized by his e-mail when the defendant did not send the e-mail to her. The defendant fails to recognize, however, that, even if the *constitutional* standard is objective foreseeability, an issue that we have declined to decide in the present case,[21] § 53a-61aa (a) (3) required the state to prove the higher recklessness standard.[22] Thus, the questions that we must address are whether the evidence was sufficient to establish beyond a reasonable doubt that (1) the defendant was aware that there was a substantial and unjustifiable risk that the language of the e-mail would be interpreted as a serious threat, and (2) the defendant was aware that there was a substantial and unjustifiable risk that Judge Bozzuto would be terrorized by the e-mail even though he did not communicate it to her directly. We conclude that the evidence was sufficient to establish beyond a reasonable doubt that the defendant committed the crime of threatening in the first degree.

"The standard of review we apply to a claim of insufficient evidence is well established. In reviewing the suffi-

[21] See part I A of this opinion.

[22] This point may also have been missed by the Appellate Court in *State* v. *Krijger*, 130 Conn. App. 470, 24 A.3d 42 (2011), rev'd, 313 Conn. 434, 97 A.3d 946 (2014). In that case, the defendant was convicted of threatening in the second degree in violation of § 53a-62 (a) (3), and breach of the peace in violation of § 53a-181 (a) (3). Id., 472. The defendant claimed on appeal to the Appellate Court that the convictions must be reversed because his speech was constitutionally protected under the true threats doctrine. Id., 476. Like the defendant in the present case, the defendant in *Krijger* did not directly raise a *statutory* sufficiency claim, and the Appellate Court affirmed the convictions upon concluding that the evidence was sufficient to establish the constitutional objective foreseeability standard, without considering whether the evidence was sufficient to satisfy the higher statutory recklessness standard. Id., 484. On appeal to this court, we concluded that the state had not met the constitutional standard and reversed the judgment of the Appellate Court. See *State* v. *Krijger*, supra, 313 Conn. 460. Accordingly, we had no occasion to consider whether the higher statutory standard had been met.

ciency of the evidence to support a criminal conviction we apply a [two part] test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [finder of fact] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . .

"We also note that the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"Additionally, [a]s we have often noted, proof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by the defendant that, had it been found credible by the [finder of fact], would have resulted in an acquittal. . . . On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the [finder of fact's] verdict of guilty." (Citations omitted; internal quotation marks omitted.) *State* v. *Morgan*, 274 Conn. 790, 799–800, 877 A.2d 739 (2005).

To convict a defendant of threatening in the first degree in violation of § 53a-61aa (a) (3), the state must

prove that (1) the defendant committed threatening in the second degree in violation of § 53a-62, and (2) in committing that offense, the defendant represented by his words that he possessed a firearm. To prove that the defendant committed threatening in the second degree in violation of § 53a-62 (a) (3), the state must prove beyond a reasonable doubt that (1) the defendant threatened to commit a crime of violence, and (2) in doing so, the defendant acted in reckless disregard of the risk of causing terror to another person. Pursuant to § 53a-3 (13), "[a] person acts 'recklessly' with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation . . . ." Thus, to convict a defendant of the crime of threatening in the second degree in violation of § 53a-62 (a) (3), the state must prove that the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that his threatening speech would cause terror to another person, that is, that the person being threatened would interpret the threat as a serious one. As we explain more fully in part III A 2 of this opinion, when the threat has been conveyed to a third party, the state must also prove that the defendant knew that there was a substantial and unjustifiable risk that the third party would communicate the threat to its target.

"Recognizing the difficulty in proving by direct evidence that an accused subjectively realized and chose to ignore a substantial risk . . . we have long held that the state of mind amounting to recklessness . . . may be inferred from conduct." (Internal quotation marks omitted.) *State* v. *Salz*, 226 Conn. 20, 33, 627 A.2d 862

(1993); see also *State* v. *Tucker*, 181 Conn. 406, 415, 435 A.2d 986 (1980) (although conduct prior to offense did not in and of itself prove intent to murder, it was relevant to establish, in connection with question of intent, pattern of behavior and attitude toward victim that was indicative of defendant's state of mind). Accordingly, it may be inferred from evidence that the defendant engaged in speech that a reasonable person would interpret as a serious threat that *the defendant himself was aware* that there was a substantial and unjustifiable risk that the speech would be so interpreted.[23] Similarly, proof beyond a reasonable doubt that a reasonable person would be aware that there was a substantial and unjustifiable risk that a threat that was communicated to a third party would subsequently be communicated to the target of the threat would support the inference that the defendant was aware of that risk.

[23] We acknowledge that, in *Elonis* v. *United States*, supra, 135 S. Ct. 2011, the Supreme Court rejected the government's argument that it could be inferred from proof that a reasonable person would interpret the defendant's threatening speech as a serious threat that the defendant was aware that the speech was threatening. *Elonis*, however, did not involve a sufficiency of the evidence claim. Rather, it involved a claim that the jury had not been instructed that it must find that the defendant was aware that his speech would be interpreted as a serious threat. See id., 2012 ("[t]he jury was instructed that the [g]overnment need prove only that a reasonable person would regard [the defendant's] communications as threats"). Accordingly, we do not believe that *Elonis* supports the proposition that recklessness cannot be inferred from proof that the defendant engaged in speech that a reasonable person would interpret as a serious threat even when the fact finder applied the proper mens rea standard. Indeed, "[w]e have long recognized that a defendant's state of mind can usually be proven only by circumstantial evidence." *State* v. *Salz*, supra, 226 Conn. 32. We recognize, however, that there might be rare cases in which a defendant could undercut such an inference by showing that he simply was not aware of the objectively reasonable meaning of his speech. For example in *Elonis* v. *United States*, supra, 2011, the government suggested the inference might be undercut by showing that the threatening speech was uttered by "a foreigner, ignorant of the English language, who would not know the meaning of the words at issue, or an individual mailing a sealed envelope without knowing its contents." (Internal quotation marks omitted.)

1

With these principles in mind, we first consider whether the evidence was sufficient to establish beyond a reasonable doubt that the defendant was aware that there was a substantial and unjustifiable risk that the recipients of his e-mail would interpret it as a serious threat. In making this determination, we consider the language used by the defendant; *State* v. *Krijger*, supra, 313 Conn. 452; the context in which the statements were made, including the reactions of the persons to whom the threat was communicated; id., 454–55; "the prior relationship between the parties"; id., 454; and "the immediate circumstances surrounding the alleged threat . . . ."[24] Id.

We turn first to the contents of the defendant's first e-mail. That e-mail stated: "The court is dog shit and has no right to shit they don't have a rule on"; "there [are] 245 [yards] between [Judge Bozzuto's] master bedroom and a cemetery that provides cover and concealment"; "[t]hey could try and put me in jail but that would start the ringing of a bell that can be undone"; "[s]omeone wants to take my kids better have an [F-35 fighter jet] and smart bombs . . . otherwise they will be found and adjusted . . . they should seek shelter on the ISS ([international] space station)"; "a [.308 caliber rifle] at 250 [yards] with a double pane drops [one-half inch] per foot beyond the glass and loses [7 percent] of [foot pounds] of force [at] 250 [yards]—nonarmor piercing ball ammunition"; and "unless you sleep with level [three] body armor or live on the [international space station] you should be careful of actions." Judge Bozzuto testified that the descriptions of her residence and the surrounding area were accu-

[24] Whether the defendant actually intended to harm Judge Bozzuto or, instead, the statements in his e-mail were, as he claims, merely hyperbolic bluster, has no bearing on our analysis. The question before us is whether the defendant knew that there was a substantial and unjustifiable risk that the recipients of the e-mail would *interpret it* as a serious threat.

rate. Thus, the defendant's e-mail made it clear that he was extremely angry at the "court," over which Judge Bozzuto had presided, that he had discovered where she lived, that he had surveilled her residence, that he had thought through a very detailed and specific way to kill her at that location, and that he had anticipated being punished for his conduct. Although the defendant did not explicitly say that he was going to shoot Judge Bozzuto, we have recognized that "rigid adherence to the literal meaning of a communication . . . would render [statutes proscribing true threats] powerless against the ingenuity of threateners who can instill in the victim's mind as clear an apprehension of impending injury by an implied menace as by a literal threat." (Internal quotation marks omitted.) *State* v. *Krijger*, supra, 313 Conn. 453. We conclude, therefore, that the language of the defendant's e-mail conveyed the clear connotation that he was seriously contemplating violence against Judge Bozzuto.

Indeed, the reactions of Nowacki, who called the e-mail disturbing, warned the defendant to refrain from making such statements, and admonished him that violence was not a solution, and Verraneault, who immediately contacted several people to express her concern and ultimately took steps to warn Judge Bozzuto, indicate that this is how they, in fact, interpreted the defendant's e-mail.[25] In addition, Judge Bozzuto's fearful

[25] The defendant contends that the fact the Verraneault did not immediately communicate the contents of the e-mail to Judge Bozzuto or to others who could warn her shows that a reasonable person would not interpret the e-mail as a serious threat of harm. The trial court found, however, that the fact that Verraneault took the threat seriously was established by evidence showing that she sought guidance from a number of people as to how to proceed immediately after reading the e-mail. The trial court also found that Verraneault's delay in warning Judge Bozzuto was explained in part by the fact that "she harbored genuine concerns as to how the defendant would react if he was to learn that she was the person who had reported the e-mail to authorities." It would, indeed, be ironic to conclude that a delay in reporting caused by a genuine fear of the person who made the threat could be used to infer that the recipient did not interpret the threat to be serious.

reaction and the steps that she took to protect herself and her family from the defendant, including installing security equipment and warning her niece not to go to her house without a police escort, show that she believed the defendant's threats were serious.

The history between the defendant and Judge Bozzuto, along with the events immediately preceding the e-mail, also support the conclusion that the defendant was aware that there was a substantial and unjustifiable risk that the recipients of the e-mail and Judge Bozzuto would interpret it as a serious threat. One of the recipients of the e-mail, Kelley, testified that, during her dealings with the family court system, her feelings ran the "full gamut of every horrible thing that you can imagine. I've been angry, I've been sad, I've been despondent. There [are] no words. Apoplectic. I mean, it's the full gamut of terror. It's absolute terror." Kelley testified that she expressed those feelings to the defendant "[b]ecause he was experiencing something similar." The trial court reasonably could have inferred from this testimony that the other e-mail recipients, all of whom had been engaged with the defendant in efforts to reform the family court system, were equally aware that the defendant harbored such feelings toward the family court system, which Judge Bozzuto represented.

The state also presented evidence in the form of testimony by Tanya Taupier that the defendant's demeanor throughout the course of the divorce proceeding had been contentious and adversarial to all court personnel involved in the case. In addition, there was evidence that, on June 18, 2014, Judge Bozzuto had admonished the defendant in court to stop interjecting his political views into the custody evaluation that was being performed by the family services unit.[26] Although

[26] The state presented evidence, on which the trial court relied, that, after Judge Bozzuto admonished the defendant in court on June 18, 2014, the defendant sent out multiple e-mails and Facebook postings criticizing Judge Bozzuto. There is no direct evidence, however, that either the recipients

there was no specific evidence that the e-mail recipients were aware of the details of this particular interaction between the defendant and Judge Bozzuto, the trial court reasonably could have inferred that the interaction would have reinforced the defendant's negative feelings toward the family court and Judge Bozzuto, and that the members of the informal family court reform group would have been generally aware of his growing animosity and frustration.

In addition, the state presented evidence that the defendant had enrolled his children in school in Cromwell, where the defendant lived, in defiance of the court order requiring that the children attend school in Ellington, where Tanya Taupier lived. In response, on August 22, 2014, the same day that the defendant sent the threatening e-mail, counsel for Tanya Taupier sent the defendant drafts of a contempt motion and an application for an emergency ex parte order of custody that she planned to file with the family court and, more specifically, Judge Bozzuto. The recipients of the e-mail and Judge Bozzuto were aware of these developments in the case when they received the defendant's e-mail.

We conclude this evidence was sufficient to establish beyond a reasonable doubt that, as the trial court stated, "a reasonable person not only *could* foresee, but readily *would* foresee, that the language in the e-mail would be interpreted by those to whom it was communicated as a serious expression of an intent to commit an act of violence [against] Judge Bozzuto . . . ." (Emphasis in original.) As we have explained, in the absence of any evidence to the contrary, proof beyond a reasonable doubt that a reasonable person would interpret threat-

of the defendant's e-mail or Judge Bozzuto were aware of these specific communications. Nevertheless, the trial court reasonably could have concluded that the members of the informal family court reform group, which included the recipients of the e-mail, were generally aware of the defendant's negative attitude toward the family court and its personnel.

ening speech as a serious threat supports the inference that the speaker was aware that the speech would be interpreted in that manner. Cf. *State* v. *Salz*, supra, 226 Conn. 33 ("the state of mind amounting to recklessness . . . may be inferred from conduct" [internal quotation marks omitted]). Moreover, as we explained in part II B of this opinion, the second e-mail that the defendant sent to Nowacki and Boyne in response to Nowacki's e-mail characterizing the defendant's first e-mail as "disturbing," and urging the defendant to refrain from making such statements, supports the inference that the defendant was subjectively aware when he sent the first e-mail that there was a substantial and unjustifiable risk that it would be interpreted as a serious threat. The defendant did not suggest in that e-mail that Nowacki should have known that the language of the first e-mail was merely hyperbolic bluster resulting from late night fatigue or a passing moment of intense despondency or frustration. Cf. *State* v. *Krijger*, supra, 313 Conn. 458 (defendant's apology moments after making threatening comments showed that threat was not serious). To the contrary, the defendant confirmed the validity of Nowacki's initial interpretation of the e-mail by stating, among other things, that, "[i]f they feel it's disturbing that I will fiercely protect my family with all my life . . . they would be correct, I will gladly accept my death and theirs protecting my civil rights under my uniform code of justice." Accordingly, we conclude that the trial court properly found that the evidence was sufficient to support a finding beyond a reasonable doubt that "the defendant was himself aware that his e-mail would be seen as threatening . . . ."

2

We next address the defendant's claim that the evidence was insufficient to establish that he was aware that there was a substantial and unjustifiable risk that Judge Bozzuto would be terrorized by the e-mail

because he did not send it to her. The defendant contends that, when he sent the e-mail regarding Judge Bozzuto, he could not have foreseen that it would be communicated to her because he sent it "to friends and fellow travelers."

To the extent that the defendant contends that threatening speech that is not communicated directly to the target of the speech cannot, as a matter of law, constitute a punishable true threat, we disagree. Numerous courts have held to the contrary.[27] Although the reason-

[27] See *United States* v. *Turner*, supra, 720 F.3d 425 (rejecting defendant's claim that blog posts on public website in which defendant repeatedly stated that three judges deserved to be killed for issuing decision affecting gun rights was not true threat because he did not threaten to kill judges on ground that threats "need be neither explicit nor conveyed with the grammatical precision of an Oxford don"); *United States* v. *Jeffries*, supra, 692 F.3d 483 (defendant who posted YouTube video of himself performing song containing numerous threatening statements directed at judge assigned to defendant's child custody case was properly convicted under threatening statute because statute contained no requirement that threat be communicated to its target); *United States* v. *Bagdasarian*, 652 F.3d 1113, 1121–22 (9th Cir. 2011) (concluding that evidence that defendant had posted comments on public internet message board suggesting that presidential candidate Barack Obama should be shot was insufficient to establish that comments would be understood as serious threat because only one of many persons who read posts understood them as sufficiently disturbing to notify authorities and because defendant did not indicate that he personally intended to shoot Obama); *United States* v. *Parr*, 545 F.3d 491, 497–98 (7th Cir. 2008) ("[a] threat doesn't need to be communicated directly to its victim"), cert. denied, 556 U.S. 1181, 129 S. Ct. 1984, 173 L. Ed. 2d 1083 (2009); *Doe* v. *Pulaski County Special School District*, supra, 306 F.3d 624 (threatening speech can be punished as true threat if speaker intended to communicate threat to third party); *United States* v. *Snelenberger*, 24 F.3d 799, 803 (6th Cir.) (under statute making it crime to threaten judge with intent to retaliate, government was not required to prove that defendant intended that threat would be communicated to judge, overruled in part on other grounds by *United States* v. *Hayes*, 227 F.3d 578 [6th Cir. 2000]), cert. denied, 513 U.S. 967, 115 S. Ct. 433, 130 L. Ed. 2d 346 (1994); *Roberts* v. *State*, supra, 78 Ark. App. 108 (although threatening statute did "not require that the threat be communicated directly to the person threatened," proof of intent to communicate is required because "the gravamen of the offense is communication, not utterance"); *People* v. *Nishi*, 207 Cal. App. 4th 954, 967, 143 Cal. Rptr. 3d 882 (2012) (threat communicated to third parties was punishable under threatening statute because "defendant intended, and expected or at least

ing of these cases is somewhat ad hoc, in light of the purpose of the true threats doctrine, which is not to punish threatening speech in a vacuum, but to protect targets of threats from the fear of violence; see *Virginia* v. *Black*, supra, 538 U.S. 360 ("a prohibition on true threats protect[s] individuals from the fear of violence and from the disruption that fear engenders" [internal quotation marks omitted]); *Roberts* v. *State*, supra, 78 Ark. App. 108 (essence of threat is "communication, not utterance"); we conclude that threatening speech that is not communicated directly to the target may

foresaw, [that the threat] would be conveyed from [the third parties] to the intended law enforcement targets of the threat"), review denied, California Supreme Court, Docket No. 07SC575 (October 17, 2012); *People* v. *Felix*, 92 Cal. App. 4th 905, 913, 112 Cal. Rptr. 2d 311 (2001) ("Where the threat is conveyed through a third party intermediary, the specific intent element of the statute is implicated. Thus, if the threatener intended the threat to be taken seriously by the victim, he must necessarily have intended it to be conveyed." [Internal quotation marks omitted.]), review denied, California Supreme Court, Docket No. S101923 (December 19, 2001); *State* v. *Chung*, 75 Haw. 398, 417, 862 P.2d 1063 (1993) (statements made to third parties constituted true threat when they "were sufficiently alarming to impel [the third parties] to transmit them to [the target of the threat] and for the police to be notified"); *People* v. *Diomedes*, 13 N.E.3d 125, 139 (Ill. App. 2014) (threat communicated to third party was true threat because "a reasonable sender would foresee that a reasonable recipient would view it as a serious threat to harm another"), appeal denied, 39 N.E.3d 1006 (Ill. 2015); *Commonwealth* v. *Beasley*, 138 A.3d 39, 47 (Pa. Super.) (threat posted on Facebook page was true threat because defendant "wanted" target of threat to receive it and "successfully and intentionally communicated his threat" to target), appeal denied, 639 Pa. 579, 161 A.3d 791 (2016) ; *Wilkins* v. *State*, 279 S.W.3d 701, 705 (Tex. App. 2007) (under statute making it crime to intentionally or knowingly threaten another, when defendant made threatening comment on telephone that was overheard by others who then reported threat to its target, evidence was insufficient to support conviction because "nothing in the record can be construed as evidence that appellant intended or knew with reasonable certainty that his statement would" place target of threat in fear); *State* v. *Johnson*, 178 P.3d 915, 919–20 (Utah App. 2008) (holding as matter of statutory interpretation that statute that criminalized threats to kill judge with intent to intimidate or retaliate did not require state to prove that defendant knew that threat would be communicated to target, but only that person to whom threat was communicated would interpret it as serious threat).

nevertheless be punished if the state establishes that the defendant's intent that the threat would be communicated to the target meets the same standard that the state must satisfy in order to punish speech that is directed specifically to the target. As we explained in part I A of this opinion, the statutory recklessness standard is constitutional. We conclude, therefore, that a defendant may be punished for threatening speech directed at a third party if the state proves beyond a reasonable doubt that the defendant was aware that there was a substantial and unjustifiable risk *both* that his speech would be interpreted as a serious threat *and* that the threat would be communicated to the target of the threat. Cf. *People* v. *Felix*, 92 Cal. App. 4th 905, 913, 112 Cal. Rptr. 2d 311 (2001) ("Where the threat is conveyed through a third party intermediary, the specific intent element of the statute is implicated. Thus, if the threatener intended the threat to be taken seriously by the victim, he must necessarily have intended it to be conveyed." [Internal quotation marks omitted.]), review denied, California Supreme Court, Docket No. S101923 (December 19, 2001).

In the present case, we agree with the trial court that, even if the recipients of the e-mail were " 'like-minded individuals' who understood and shared [the defendant's] frustration with the family court system" and his desire to reform it, the language of the e-mail was so extreme that the defendant had to have been "aware of and consciously disregarded the substantial and unjustifiable risk that . . . it would be disclosed to others and cause terror to Judge Bozzuto." Indeed, there was no credible evidence that would support, much less compel, a finding that the defendant believed that all of the recipients would either support or be indifferent to a serious threat to kill a family court judge. To the contrary, the reactions of Nowacki and Verraneault to the defendant's first e-mail support the inference that

it was not typical of the communications that previously had been shared by the group and, therefore, that the defendant would have had no reason to believe the recipients would share his desire to inflict violence against Judge Bozzuto.[28]

Moreover, when Skipp was asked if all of the recipients of the e-mail were "of a like mind when the issue was family court in Connecticut," she agreed that they were with the *exception* of Verraneault, who had "no children that were endangered by the state's actions." We conclude that this evidence was sufficient to establish beyond a reasonable doubt that the defendant was aware that there was a substantial and unjustifiable risk that *at least* Verraneault would react to the e-mail in the same manner that any reasonable person would react to a serious death threat against another person, and take steps to notify Judge Bozzuto. Accordingly, we conclude that the evidence was sufficient to establish beyond a reasonable doubt that the defendant committed the crime of threatening in the first degree in violation of § 53a-61aa (a) (3).

B

Finally, we address the defendant's contention that the evidence was insufficient to establish that he engaged in disorderly conduct directed at Verraneault. To prove this charge, the state was required to establish

[28] As the trial court recognized, Skipp testified that the group of people interested in reforming the family court system had exchanged communications that were similar in intensity and hyperbole to the statements in the defendant's e-mail. The only examples that she could provide, however, were her own statements that "I wish I could mail [the guardian ad litem in her family court case] a box of dog poop" and "I wish [the guardian ad litem] would [self-immolate] . . . ." Kelley characterized the defendant's e-mail as a "hyperbolic [rant]." The trial court concluded, however, that there were serious questions as to whether Skipp and Kelley "were objective and unbiased witnesses [that] significantly undermined the value and credibility of their testimony" on this issue.

that the defendant, by engaging in offensive or disorderly conduct, recklessly created a risk of causing inconvenience, annoyance or alarm to Verraneault. See General Statutes § 53a-182 (a). The defendant contends that although Verraneault "undoubtedly experienced 'inconvenience, annoyance or alarm' upon receipt of the e-mail," because the e-mail was not a true threat, Verraneault's "tender sensibilities should be of no moment to this court."

We have concluded, however, that the defendant's e-mail *was* indeed a true threat. We further conclude that, when a speaker communicates a true threat to a person other than the target of the threat, and there is no evidence that the speaker believed that the third party would share or be indifferent to the speaker's desire to inflict violence on the target, the communication constitutes offensive conduct and creates a substantial and unjustifiable risk that the person will be inconvenienced, annoyed and alarmed. The defendant placed Verraneault in a position requiring her to either keep quiet about the threat, thereby making herself partially responsible—at least morally, if not legally—in the event it was carried out, or to instead communicate the threat to Judge Bozzuto, thereby taking the risk that the defendant's homicidal anger would be directed at her. Indeed, the trial court expressly found that Verraneault "harbored [fears] about her own safety if [the defendant] were to learn that she was the person who had disclosed the e-mail to law enforcement authorities . . . ." Accordingly, we conclude that the evidence was sufficient to support the defendant's conviction of disorderly conduct directed at Verraneault.

The judgment is affirmed.

In this opinion the other justices concurred.

CITY OF HARTFORD *v.* CBV PARKING HARTFORD, LLC, ET AL.
(SC 20044)

Palmer, McDonald, Robinson, D'Auria, Mullins and Kahn, Js.*

Syllabus

The plaintiff, the city of Hartford, appealed from the judgment of the trial court, which increased the amount of compensation paid in connection with the city's taking of certain property through its exercise of eminent domain. The property consisted of three distinct parcels, A, B and C, which were being used as parking lots at the time of the taking. The city had taken the parcels to advance its redevelopment plan that included the construction of a baseball stadium, which was to be built directly across the street from parcel A. The city had previously purchased two properties that abutted parcel A. At trial, the city and the defendant property owners presented appraisals that were based on a comparable sales methodology. The city's appraisals assumed that the parcels would continue to be used as parking lots, but the defendants' appraisals valued the parcels on the basis of their highest and best use as part of the anticipated surrounding redevelopment. The trial court relied primarily on the appraisal of M Co., one of the defendants' appraisers. M Co.'s appraisal was based on the concept of assemblage of properties, concluding that it was reasonably probable that parcel A would be joined with the city's adjoining properties, thereby enhancing its value because it could permit a higher and better use. Upon determining that the parcels comprising the property were worth $2,830,000 more than the amount the city paid at the time of the taking, the trial court rendered judgment for the defendants. Thereafter, the defendants filed a motion for an award of interest pursuant to the statute (§ 37-3a) governing interest in civil actions generally. The city opposed the motion on the ground that the defendants were entitled to interest at the default rate set forth in the statute (§ 37-3c) governing condemnation actions because the trial court failed to set an interest rate in its judgment. The parties subsequently stipulated that, if the trial court were to conclude that it could set a "reasonable and just" interest rate after it rendered judgment, that rate would be 7.22 percent. The trial court granted the defendants' motion for an award of interest at the rate of 7.22 percent, and, because the total compensation award, including interest at a rate of 7.22 percent, exceeded the amount of the defendants' offer of compromise, the trial court awarded offer of compromise interest over the city's objection. The city appealed, claiming that the trial court improp-

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

erly valued the property on the basis of an unreasonable assumption that the defendants would assemble the parcels with the city's properties for commercial development and improperly awarded interest under § 37-3c at a rate of 7.22 percent and offer of compromise interest. *Held*:

1. There was no merit to the defendants' claim that the city's appeal was moot because it challenged only one of two independent grounds that supported the trial court's fair market value determination: when the relevant portion of the trial court's decision was viewed in its entirety and in context, it was apparent that the court's valuation did not rest on an alternative ground based on the per square foot values of the city's two properties adjoining parcel A rather than on a valuation predicated on assemblage, as the court did not adopt either of the per square foot values or settle on a valuation that conformed to any obvious mathematical formula based on those values; moreover, the court referenced the per square foot values to bolster its conclusion that M Co.'s valuation, which was predicated on assemblage, was sound.
2. This court could not conclude, in light of the record and the claims presented, that the trial court made a mistake when, in applying the proper legal standard, it found that assemblage of the defendants' parcels with the city's properties for development was reasonably probable, even in the absence of condemnation: the trial court repeatedly cited applicable governing law and implicitly acknowledged the requirement that assemblage must be reasonably probable in the absence of condemnation in stating its reasons for finding M Co.'s appraisal persuasive, and there was additional support in the record, on which the trial court was entitled to rely, for the court's determination that development was reasonably probable, including that the city had no intention of retaining the two properties adjoining parcel A, the city's properties were not intended for public use but for commercial and residential development by a private developer, as evidenced by a development proposal selected by the city that represented that it had secured letters of interest for the construction of various commercial entities, one of the defendants' appraisers cited research indicating that the construction of similar types of baseball stadiums in other cities had sparked redevelopment, and the testimony of the principal of one of the defendants, an experienced real estate investor, that, from the time of the purchase of the parcels, he had viewed the parcels as best assembled with adjoining properties for development, had undertaken substantial measures to eliminate obstacles to assemblage, had secured two other investors for development of the parcels, and had financed the parcels so as to provide the option to sell them to other developers or to contribute them to a joint venture and to be a codeveloper; moreover, the trial court further supported its reliance on M Co.'s appraisal by reference to the per square foot price paid by the city for the two properties abutting parcel A prior to the announcement of the proposed baseball stadium, as parcel A had

substantially greater street frontage directly across the street from the stadium site than the city's two properties.

3. The trial court lacked authority to set a rate of interest other than the default rate set forth in § 37-3c after it rendered its judgment of compensation without setting an interest rate therein, and, accordingly, its award of interest at a rate of 7.22 percent was improper and resulted in an improper award of offer of compromise interest: the unambiguous language of § 37-3c dictated that, when, as in the present case, a judgment of compensation does not include a rate of interest, the default rate applies; moreover, there was no merit to the defendants' claim that a condemnee must be able to seek interest postjudgment because it would not make sense to present evidence regarding a reasonable and just rate of interest prior to a court's finding that the amount provided by the government at the time of taking was inadequate, as the condemnee would be free to seek bifurcation of the proceeding, first resolving the value of the property and then resolving the matter of a reasonable rate of interest; furthermore, the award of offer of compromise interest was improper because, if the default rate had properly been applied, the total compensation owed to the defendants would not have exceeded the amount of the defendants' offer to compromise.

Argued April 4—officially released September 11, 2018

Procedural History

Appeal from the statement of compensation filed by the plaintiff in connection with its taking by eminent domain of certain real property owned by the named defendant et al., brought to the Superior Court in the judicial district of Hartford and tried to the court, *Hon. Constance L. Epstein*, judge trial referee, who, exercising the powers of the Superior Court, rendered judgment increasing the amount of compensation, from which the plaintiff appealed; thereafter, the court granted the revised motion for an award of interest and for offer of compromise interest filed by the named defendant et al., and the plaintiff filed an amended appeal. *Reversed in part*; *further proceedings*.

Daniel J. Krisch, with whom was *Michael C. Collins*, for the appellant (plaintiff).

Daniel J. Klau with whom was *R. Bartley Halloran*, for the appellees (named defendant et al.).

Opinion

McDONALD, J. The plaintiff, the city of Hartford, exercised its power of eminent domain to take certain property owned by three defendants[1] to advance the city's redevelopment plan that included the construction of a minor league baseball stadium in close proximity to the defendants' property. The defendants, believing that the compensation offered by the city did not account for the increased value and prospects for their property due to the planned ballpark, appealed from the statement of compensation filed by the city. The trial court sustained the appeal, increasing the amount of compensation by approximately $3 million and ordering the city to pay interest at the rate of 7.22 percent. The city appeals from that judgment, claiming that the trial court (1) improperly valued the property on the basis of an unreasonable assumption that the defendants would assemble their parcels with adjoining properties owned by the city for commercial development, and (2) exceeded its authority under General Statutes § 37-3c in its award of interest. We disagree with the city's first claim but agree with its second claim.

The record reveals the following facts, found by the trial court or otherwise undisputed. The property is located in an area north of the downtown area of the city (north downtown) and is comprised of fourteen tax lots that form three distinct parcels, each of irregular shape and covering only part of a city block (collectively, property). For purposes of this case, the property has been designated as Parcels A, B, and C.[2] Parcel A

[1] The defendants are CBV Parking Hartford, LLC, CBV Parking Hartford Ann, LLC, and CBV Parking Hartford Chapel, LLC. Although related entities, each defendant held title to one of three parcels comprising the property subject to the taking. Several other entities that had record interests in the property were named as defendants but are not parties to this appeal.

[2] For ease of reference, a map included in one of the reports submitted by the valuation experts reflecting the boundaries of Parcels A, B and C is reproduced as an appendix to this opinion.

is located directly across from the Dunkin Donuts Park minor league baseball stadium (ballpark) on Main Street, constructed after the taking at issue. Parcel B is located two blocks south of the ballpark on the corner of Ann Uccello and Chapel Streets. Parcel C is located diagonally across from the ballpark on the corner of Main and Pleasant Streets. Collectively, the property is 2.89 acres. Prior to the taking, the three parcels were being used as parking lots. The parcels are situated in areas of north downtown that were zoned as either B-1 or B-2, the most permissive zoning categories in the city, permitting commercial and multifamily uses.

North downtown, due to its separation from the core downtown area by Interstate 84 (I-84), has historically become a separate entity from the downtown. It largely did not benefit from increased commercial development that took place starting in the late 1990s that transformed and reenergized the core downtown. Prior to and continuing through the time of the taking, north downtown contained many rundown and/or abandoned buildings and lots, as well as large, disintegrating parking areas leased by businesses on the south side of I-84 for their employees' use.

Starting in 2003, the city undertook a series of efforts aimed at changing the fortunes of north downtown. In 2003 and 2004, it constructed or renovated several buildings in that area, including a Public Safety Complex, the Hartford police headquarters, and the Capitol Preparatory Magnet School. By early 2009, city officials approved a 2008 redevelopment plan with the stated goal of creating an opportunity for educational, commercial, and residential development in north downtown. The property was included in the area designated for such development. The plan called for the acquisition of properties by purchase, or eminent domain if necessary, to accomplish its development goals. In furtherance of these goals, in 2010, the city acquired a

parcel of land adjoining one side of Parcel A and demolished an eyesore building on it commonly known as the "Butt Ugly" building (Ugly lot). The city acquired other properties in the area, but definitive redevelopment plans had not yet materialized.

In July, 2012, a financially distressed seller sold the property under a single deed for approximately $374,000 to the defendant CBV Parking Hartford, LLC, a subsidiary of CBV Parking Holding, LLC (CBV). The sale was not an arm's-length transaction, and the sale price was well under the city's valuation for purposes of property tax assessment.

Pennock J. Yeatman, the sole owner of CBV, is an experienced investor and developer of real estate. Prior to the purchase of the property, Yeatman had reviewed the city's 2008 plan and researched any impediment to redevelopment of the property. After he obtained the property, Yeatman took several steps to facilitate the sale or redevelopment of the property. He divided the property into three parcels to make the option of individual sales readily available, executing conveyances so that each of the three defendant subsidiaries of CBV held one. See footnote 1 of this opinion. He also negotiated the elimination of "gangway" rights or easements,[3] which he viewed as a potential obstacle to assemblage of the property with adjoining properties. CBV's business plan identified the city as "the logical buyer" for Parcel A, viewing the asset as a "long-term assemblage" with adjoining properties owned by the city for a single lot for redevelopment.

By late 2012, the city had become the owner of both of the two smaller properties that adjoined Parcel A: a LAZ parking lot on one side of Parcel A that the city had purchased in October, 2012, for $1,280,000, and the

[3] Yeatman testified that a gangway is "a pedestrian access point to allow pedestrians to get from one property to another."

Ugly lot on the other side of Parcel A that it previously had acquired and razed for a total cost of $1,225,000.

In May, 2013, the city offered to buy Parcels A, B, and C for $1,170,000. CBV rejected the offer, indicating that the property was considerably more valuable and that CBV had no financial or other pressures requiring immediate sale. Negotiations continued with offers and counteroffers.

In the meantime and unbeknownst to CBV, the city had decided that the construction of a ballpark could be the catalyst for further redevelopment in north downtown. On July 1, 2014, the city solicited proposals for a public/private partnership for both the construction of the ballpark and the mixed-use development of its environs, including the property.

By the close of the August 1, 2014 deadline for submissions, the city had received three proposals. It selected the one prepared by DoNo Hartford, LLC (DoNo), in collaboration with two other entities. DoNo's proposal presented a concept plan for a " 'dynamic new neighborhood' " for north downtown that included the ballpark, retail businesses, restaurants, and 600 residential units. Under the proposal, Parcels A, B, and C were to be assembled with adjoining properties for mixed-use development. The proposal indicated that DoNo had secured letters of interest for the construction of a grocery store and a brewery with a rooftop beer garden. DoNo supported its proposal with a market study, which concluded: " 'Given the current dynamics between employment, the state of housing opportunities in outlying areas of Hartford, and the tremendous opportunity for placemaking around the ballpark, the necessary conditions are in place to redefine what it means to live downtown. . . . The subject site represents an opportunity to develop and deliver a [mixed-

use] neighborhood at the exact inflection point of downtown redevelopment.' "

Neither CBV nor Yeatman submitted a proposal, and the city did not solicit one from either. Yeatman claimed to have learned about the ballpark proposal from a Hartford Courant newspaper article published in July, 2014, and the request for development proposals sometime thereafter. According to Yeatman, the one month submission deadline was unusually short by industry standards, and he had inadequate time to complete a proper proposal for submission.[4]

In August, 2014, the city's Court of Common Council approved a resolution authorizing the purchase of the property for $2.5 million, a price to which the parties had previously tentatively agreed. However, in light of the changing landscape, Yeatman countered with a proposal to sell only Parcel A to the city, which would allow the city to assemble the entire block immediately across the street from the ballpark but would allow Yeatman to develop Parcels B and C himself. The city rejected this offer.

In November, 2014, the city exercised its power of eminent domain to take the entire property, filing a statement of compensation of $1,980,000 for the taking. The defendants appealed to the Superior Court, claiming that the amount of compensation was "inadequate." In a trial to the court, both the city and the defendants each presented two appraisals and supporting expert testimony; all of the appraisals were based on a comparable sales methodology.

[4] Yeatman testified that the short deadline evidenced that the request for proposals was simply a "beauty contest," because the preparation necessary to complete the market studies and establish the financial bona fides for a proper submission could not reasonably have been completed in such a short period. The trial court found it unnecessary to make any findings as to whether Yeatman "had been treated fairly by the city."

The city's appraisals valued the property at the time of the taking at $1,900,000 and $2,010,000, respectively. Both appraisals assumed continuation of the property's present use as parking lots. The court concluded that both appraisals suffered from the same "astounding shortcoming"; neither took into account the "major change" of the announced ballpark and expectations for surrounding development.

The defendants' appraisals, prepared by Michaud Company (Michaud) and J.F. Mulready Company, LLC (Mulready), valued the property at $4,810,000 and $5,220,000, respectively. The court rejected the higher Mulready appraisal, which was premised on research related to the effect that new minor league ballparks had on surrounding land values in three other cities, two in North Carolina and one in Indiana. The court found that Mulready's assumption that the positive effects of those developments would similarly follow in Hartford, despite current difficulties remaining in Hartford, was "much too enthusiastic . . . ." It also concluded that "the research . . . does not support the singularly successful picture" reflected in Mulready's valuation.

The court found the Michaud appraisal of $4,810,000 the "most persuasive." The court set forth the following reasons. That appraisal rejected the "as is" approach of the city's appraisals because they did not reflect the highest and best use of the property. The Michaud appraisal also took into account the " 'cloud' " of the city's eminent domain power, which could dissuade competitive buyers and in turn depress value. Significantly, with regard to highest and best use, the court noted: "The Michaud report relies on the concept of 'assemblage,'[5] contemplating that the LAZ property and

[5] As we explain in further detail in this opinion, the doctrine of assemblage permits a property owner to introduce evidence in a condemnation proceeding that the fair market value of its land is enhanced by its probable assemblage with other parcels, which in turn could permit a higher and better

the Ugly [lot] would be joined with the Main Street exposure of the . . . property. Indeed, that is exactly the basis on which DoNo premised its proposal. CBV could have made this assemblage, but was not afforded the opportunity to do so. The Michaud analysis concludes that it was reasonably probable that the property would be assembled, and if the city did not take the parcel, the market would respond. CBV could have developed this property. CBV could have developed Parcels B and C, with the city obtaining [Parcel] A. CBV could have purchased the LAZ and Ugly lots. One of the things that the Mulready findings underscore is that this scenario is exactly what occurred in the three cities studied by Mulready." Finally, the court pointed to the per square foot price that the city had paid for the two lots adjacent to Parcel A before the ballpark was announced, which, if applied to the property, would have yielded a valuation of $3,245,298 or $5,339,933.[6] In conclusion, the court sustained the defendants' appeal, holding that the fair market value of the property at the time of the taking was $4,810,000.

Approximately two weeks after the court issued its decision, upon the defendants' motion, the court awarded interest at a rate of 7.22 percent. The city appealed from the trial court's judgment to the Appellate Court, and we thereafter transferred the appeal to this court. See General Statutes § 51-199 (c); Practice

use. See *Commissioner of Transportation* v. *Towpath Associates*, 255 Conn. 529, 548–49, 767 A.2d 1169 (2001).

[6] The city paid $1,280,000, equating to $25.75 per square foot, for the LAZ lot. The city paid $625,000 for the Ugly lot plus $600,000 to demolish the eyesore building on it, which, together, equated to a per square foot price of $42.37. According to one of the city's experts, the city was highly motivated to buy the Ugly lot because many city officials believed that the building was such a "blight" on the neighborhood that it had "stymied" development in that area. This view was consistent with the 2008 redevelopment plan's goal of removing "obsolete and blighted buildings from a critical perimeter area of the [d]owntown . . . ."

Book § 65-1. On appeal, the city challenges both the amount of compensation and the rate at which the trial court awarded interest.

I

The city claims that the court improperly valued the property on the basis of an unreasonable assumption that the defendants would assemble the property with adjoining properties owned by the city for commercial development. In response, the defendants contend that the city's appeal is moot because it challenges only one of two independent grounds that support the trial court's fair market value determination. Alternatively, they contend that, if the appeal is not dismissed as moot, the city cannot prevail on the merits because the trial court's assemblage valuation was proper.

A

"Mootness implicates [this] court's subject matter jurisdiction and is thus a threshold matter for us to resolve." (Internal quotation marks omitted.) *Burbank* v. *Board of Education*, 299 Conn. 833, 839, 11 A.3d 658 (2011). Undoubtedly, if there exists an unchallenged, independent ground to support a decision, an appeal from that decision would be moot, as this court could not afford practical relief even if the appellant were to prevail on the issue raised on appeal. See, e.g., *Middlebury* v. *Connecticut Siting Council*, 326 Conn. 40, 54, 161 A.3d 537 (2017); *Doe* v. *Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 379 n.23, 119 A.3d 462 (2015). We are not persuaded that such circumstances exist in the present case.

The defendants contend that the trial court's valuation rested on an alternative ground that was not based on assemblage. They rely on the final paragraph of the trial court's analysis, which commences with the following sentence: "The history of the city's taking of

the two properties adjoining Parcel A of the subject property is enlightening for purposes of this court's evaluation *and presents a basis for valuing the property even without application of the assemblage doctrine*." (Emphasis added.) The remainder of the paragraph then explains that applying the per square foot prices paid by the city for the two parcels adjacent to Parcel A to the property would have yielded valuations of $3,245,298 or $5,339,933.

Although the trial court's initial statement clearly lends support to the defendants' view, the paragraph viewed in its entirety and in context persuades us otherwise. The trial court did not adopt either of the two per square foot valuations cited, or even the mean of the two ($4,292,615.50). It did not indicate that it had weighted one of those valuations more heavily than the other, and the valuation ultimately adopted does not conform to any obvious mathematical formula. Nor did the court articulate any reason to settle on a figure closer to the valuation of one adjacent parcel than the other. Instead, adopting the defendants' view, the trial court would have had to settle on the mean of the two valuations, and added the seemingly arbitrary figure of $517,384.50 to coincidentally arrive at the exact same valuation as Michaud's valuation of $4,810,000—a valuation predicated on assemblage.

We recognize that the trial court can make an independent determination of value and fair compensation in light of all the circumstances and is not bound by the valuations or valuation methods used by the appraisers. See, e.g., *Bristol* v. *Tilcon Minerals, Inc.*, 284 Conn. 55, 74–75, 931 A.2d 237 (2007); *Robinson* v. *Westport*, 222 Conn. 402, 410, 610 A.2d 611 (1992). Nonetheless, we decline to presume, in the absence of clearer evidence, that the trial court arbitrarily settled on a valuation. Accordingly, while it also is not an entirely satisfying interpretation of the final paragraph of the court's analy-

sis, the better interpretation is that the court referenced the per square foot valuations to bolster its conclusion that Michaud's valuation, predicated on assemblage, was sound. Therefore, the city's appeal challenging that valuation is not moot.

B

The question before us, therefore, is whether the trial court's adoption of Michaud's valuation was proper. The city's argument is twofold. First, it contends that the trial court applied the wrong legal test because, when it assumed that the defendants would assemble the property with neighboring properties owned by the city for commercial development, it failed to consider whether assemblage would have occurred in the absence of condemnation. Second, it contends that the evidence would not support a conclusion that the proper test was met. We do not agree with either contention.

The governing principles are not in dispute. The government must pay "just compensation" when it takes private property. U.S. Const., amend. V; accord Conn. Const., art. I, § 11. "The amount that constitutes just compensation is the market value of the condemned property when put to its highest and best use at the time of the taking. . . . The highest and best use of a given parcel contemplates the use which will most likely produce the highest market value, greatest financial return, or the most profit . . . ." (Citation omitted; internal quotation marks omitted.) *Commissioner of Transportation* v. *Towpath Associates*, 255 Conn. 529, 540, 767 A.2d 1169 (2001) (*Towpath*).

"Evidence of the special adaptability of land for a particular purpose is properly admitted if there is a reasonable probability that the land could be so used within a reasonable time and with economic feasibility. . . . A landowner must provide the trier with sufficient

evidence from which it could conclude that it is reasonably probable that the land to be taken would, but for the taking, be devoted to the proposed use by a prudent investor in the near future. . . . The uses to be considered must be so reasonably probable as to have an effect on the present market value of the land. Purely imaginative or speculative value should not be considered." (Citations omitted; internal quotation marks omitted.) Id., 544; accord *Bristol* v. *Tilcon Minerals, Inc.*, supra, 284 Conn. 64–65; *Northeast Ct. Economic Alliance, Inc.* v. *ATC Partnership*, 256 Conn. 813, 828–29, 776 A.2d 1068 (2001).

Similarly, "[t]he doctrine of assemblage applies when the highest and best use of separate parcels involves their integrated use with lands of another. Pursuant to this doctrine, such prospective use may be properly considered in fixing the value of the property if the joinder of the parcels is reasonably practicable. If applicable, this doctrine allows a property owner to introduce evidence showing that the fair market value of the owner's real estate is enhanced by its probable assemblage with other parcels." 4 J. Sackman, Nichols on Eminent Domain (3d Ed. Rev. 2018) § 13.01 [17].

"[If] combination of the parcels is *reasonably probable*, then evidence concerning assemblage, and, ultimately, a finding that the land is specially adaptable for that highest and best use, may be appropriate. . . . [T]he use of property in conjunction with other parcels may affect value if it is shown that such an integrated use reasonably would have occurred *in the absence of the condemnation*." (Citation omitted; emphasis added; internal quotation marks omitted.) *Towpath*, supra, 255 Conn. 549–50.

"[A]lthough the possibility of a change . . . always exists in some degree, it [is often] difficult to prove that such a possibility has become a reasonable proba-

bility. . . . Because of the uncertainties necessarily attending the determination of the probability of the happening of such an event in the future, claims and evidence regarding the probability must be scrutinized with care and examined with caution." (Citation omitted; internal quotation marks omitted.) Id., 551.

The trier of fact's determinations as to what is the highest and best use of the property and whether there is a reasonable probability of a future change affecting value are questions of fact. *Bristol* v. *Tilcon Minerals, Inc.*, supra, 284 Conn. 64–65; *Greene* v. *Burns*, 221 Conn. 736, 748, 607 A.2d 402 (1992). As such, we do not disturb the trial court's findings on these matters unless they are clearly erroneous. *Bristol* v. *Tilcon Minerals, Inc.*, supra, 65; *Robinson* v. *Westport*, supra, 222 Conn. 414.

The city's first line of attack, however, is that the trial court's findings as to these matters were made without consideration of a critical element, namely, whether assemblage of the property with parcels owned by the city reasonably would have occurred "in the absence of the condemnation." *Towpath*, supra, 255 Conn. 550. Whether the trial court applied the proper legal standard is subject to plenary review on appeal. See, e.g., *St. Joseph's High School, Inc.* v. *Planning & Zoning Commission*, 176 Conn. App. 570, 586–87, 170 A.3d 73 (2017); *Norwich* v. *Styx Investors in Norwich, LLC*, 92 Conn. App. 801, 808, 887 A.2d 910 (2006).

We are not persuaded that the trial court failed to apply the proper standard. The city places too much weight on the fact that the trial court did not recite the talismanic phrase "in the absence of condemnation" when reciting the governing law. The trial court repeatedly cited our decision in *Towpath*, supra, 255 Conn. 548–50, which unambiguously sets forth this requirement. The trial court implicitly acknowledged this requirement when citing its reasons for finding the

Michaud valuation persuasive: "The Michaud analysis concludes that it was reasonably probable that the property would be assembled, *and if the city did not take the parcel*, *the market would respond*." (Emphasis added.) This statement is sufficient to warrant application of the presumption that the trial court applied the proper legal standard. See *DeNunzio* v. *DeNunzio*, 320 Conn. 178, 197, 128 A.3d 901 (2016) ("[w]hen examining an ambiguous decision . . . we presume that the trial court applied the correct standard" [internal quotation marks omitted]); *Singhaviroj* v. *Board of Education*, 301 Conn. 1, 17 n.12, 17 A.3d 1013 (2011) (noting presumption and appellant's failure to seek articulation); see, e.g., *Greene* v. *Burns*, supra, 221 Conn. 746–47. To the extent that the city's view of the legal standard is colored by its concern as to the propriety of the trial court's ultimate finding of fact that this standard was met, that is a separate matter.

Before we examine the trial court's ultimate finding—that there was a reasonable probability of assemblage for redevelopment by an entity other than the city—it is important to make two clarifications as to the scope of the matter before us. First, the trial court's decision appears to support the defendants' view that the lion's share of the difference between Michaud's valuation and those of the city's experts arises not from assemblage but from the effect on surrounding property values of the city's plan to construct a ballpark. The city's arguments on appeal, however, are exclusively directed to the matter of assemblage.[7] Accordingly, we have no

[7] In the city's posttrial brief, it appears to have conceded that the value added by such plans could be considered if that value was not speculative: "The only relevance that the proposed baseball stadium has in this case is what impact, if any, did the information that was available [on the date of the taking] on December 9, 2014, regarding the proposed development have on the value of the subject property. While it is the stated goal of the [request for proposals] to catalyze development through the ballpark, the plan that was produced in response to that [request] is only conceptual and may not be developed."

occasion in this opinion to consider whether a principle articulated by some other jurisdictions, namely, that the fair market value of property taken shall not include any increase (or decrease) in the value attributable to a redevelopment project for which the property is taken, has any application to the present circumstances.[8]

[8] See *Almota Farmers Elevator & Warehouse Co.* v. *United States*, 409 U.S. 470, 480, 93 S. Ct. 791, 35 L. Ed. 2d 1 (1973) (Powell, J., concurring) ("Where multiple properties or property interests are condemned for a particular public project, the [g]overnment must pay pre-existing market value for each. Neither the [g]overnment nor the condemnee may take advantage of an alteration in market value attributable to the project itself." [Emphasis omitted; internal quotation marks omitted.]); *Santa Clara Valley Transportation Authority* v. *Mission West Shoreline, LLC*, Docket No. H030248, 2008 WL 1823068, *6 (Cal. App. April 24, 2008) ("[t]he fair market value of the property taken shall not include any increase or decrease in the value of the property that is attributable to any of the following . . . [a] [t]he project for which the property is taken . . . [b] [t]he eminent domain proceeding in which the property is taken . . . [c] [a]ny preliminary actions of the plaintiff relating to the taking of the property" [internal quotation marks omitted]); *Cole* v. *Boston Edison Co.*, 338 Mass. 661, 666, 157 N.E.2d 209 (1959) (noting rule that, "if it was contemplated at the time of the original construction that the land in question would sooner or later be taken for the purposes of the project, the enhanced value is not to be used in determining damages" [emphasis omitted]); *Regents of the University of Minnesota* v. *Hibbing*, 302 Minn. 481, 485, 225 N.W.2d 810 (1975) ("[n]either an owner nor a condemnor is permitted to gain by any increase or decrease in value of the land taken due to the impact upon land values generated by an area redevelopment project for which the tracts included are acquired" [internal quotation marks omitted]); *Fusegni* v. *Portsmouth Housing Authority*, 114 N.H. 207, 209, 317 A.2d 580 (1974) (acknowledging rule that trier of fact is not entitled to consider any increase or enhancement in value of condemnee's property due to redevelopment project including condemnee's property); *Cleveland* v. *Carcione*, 118 Ohio App. 525, 531, 190 N.E.2d 52 (1963) ("[w]here one entire plan has been adopted for a public improvement, and from the inception a certain tract of land has been actually included therein, the owner of such tract in a condemnation proceeding therefor is not entitled to an increased value which may result from the improvement, where its appropriation is a condition precedent to the existence of the improvement" [internal quotation marks omitted]); see also *United States* v. *Fuller*, 409 U.S. 488, 492, 93 S. Ct. 801, 35 L. Ed. 2d 16 (1973) ("the general principle [is] that the [g]overnment as condemnor may not be required to compensate a condemnee for elements of value that the [g]overnment has created, or that it might have destroyed under the exercise of governmental authority other than the power of eminent domain"); *West Haven* v. *Norback*, 263 Conn. 155, 170, 819 A.2d 235 (2003) (concluding that

Second, it is apparent that, throughout these proceedings, the parties and the trial court operated under the assumption that the doctrine of assemblage applies irrespective of whether the properties at issue are under common ownership. In *Towpath*, this court recognized that there is a split of authority among other jurisdictions on this question but found it unnecessary to adopt a position on that issue because it had not been raised by the parties.[9] *Towpath*, supra, 255 Conn. 549 n.13 (expressly leaving question open); see also J. Sackman, supra, § 13.01 [17]. As the parties to the present case similarly have not raised this issue, we proceed under the same assumption for purposes of resolving the issues in this appeal.

Having clarified our focus in the present case, we now examine the record to ascertain whether, and to what extent, it supports the trial court's ultimate finding—that assemblage of the property with the city's properties for redevelopment by someone other than the city was reasonably probable. The city does not contend that there was no evidence to support this finding but, rather, seeks to overturn the trial court's judgment on the extraordinary standard that review of the record should engender a "definite and firm conviction that a mistake has been made." (Internal quotation marks omitted.) *Levine* v. *Sterling*, 300 Conn. 521, 535,

referee's reference to anticipated development of surrounding properties was not improper because report did not establish that such development was necessary to determination of fair market value).

Relatedly, although DoNo's proposal set forth several conditions for its approximately $330 million investment, not the least of which were substantial infrastructure investments and financial concessions by the city, the city did not advance any argument before the trial court relating to these matters. Therefore, we similarly do not consider those factors.

[9] We presume that the trial court and the parties took this approach because there is Appellate Court case law holding that "the better rule is not to impose an absolute requirement of common ownership for parcels sought to be assembled for valuation purposes." *Franc* v. *Bethel Holding Co.*, 73 Conn. App. 114, 122–23, 807 A.2d 519, cert. granted, 262 Conn. 923, 812 A.2d 864 (2002) (appeal withdrawn October 21, 2003).

16 A.3d 664 (2011); see id. (citing alternative tests for ascertaining clear error). Specifically, the city contends that the trial court's reliance on assemblage rested on three pillars that mirrored the valuation that this court deemed improper in *Towpath*: (1) the assemblage premise for DoNo's proposal; (2) Michaud's analysis; and (3) the defendants' purported ability to assemble and develop the properties. We disagree.

In *Towpath*, the Department of Transportation exercised the state's power of eminent domain to take properties on opposite sides of a river containing the remnants of stone bridge abutments in order to bridge the river as part of a project to realign and improve a highway. See *Towpath*, supra, 255 Conn. 530–31, 533. In the defendant property owners' appeal to the Superior Court, the property owners' expert opined that the highest and best use of the property was the use proposed by the state, a bridge site connecting the bridge abutments. Id., 536. The department's expert opined that the highest and best use of both properties was their current use as "vacant/flood zone land," assigning no value to the bridge abutments. Id., 537. The trial court agreed with the valuation proposed by the property owners. Id., 538.

On appeal to this court, the department contended that the trial court improperly failed to apply the general rule "that the loss to the owner from the taking, and not its value to the condemnor, is the measure of the damages to be awarded in eminent domain proceedings." (Internal quotation marks omitted.) Id., 539. The department further contended that, "because the land was held by separate owners and because anyone wanting to build a bridge would have had to connect the parcels, the trial court engaged in improper speculation in awarding compensation for their special adaptability as a bridge site." Id.

This court concluded that the record did not support the trial court's determination that it was reasonably

probable that someone other than the department would have assembled these properties in the near future to construct a bridge thereon. Id., 547–48. The only evidence regarding that scenario came from the defendants' expert, who simply asserted that the abutments could be connected to create either a bike path and/or a walking path to facilitate recreation, and that such projects had been undertaken by public or private entities in other towns. Id., 546. The court concluded that the record failed to provide an adequate foundation to support a finding that it was anything other than " 'imaginative or speculative' that another entity would have acquired these two parcels in the near future to pursue a bridge project." Id., 548. The court further noted that, "although not a conclusive factor, it is undisputed that neither [defendant property owner] had utilized the properties as proposed for their highest and best use; nor did they submit any plans that they, or anyone else, had for using the properties in such a way had the department not condemned the properties for its highway project." Id., 552.

There are material differences between *Towpath* and the present case that compel a different result. We acknowledge that the defendants' expert witness, Richard A. Michaud of the Michaud Company, was not asked to elaborate on the basis of his opinion that it was reasonably probable that the market would have responded to assemble the property for redevelopment if the city had not taken the property.[10] He did testify unequivocally, however, that the ballpark would have sparked market interest in developing this property. This testimony was consistent with the findings in his report, which examined market conditions existing in Hartford at the time of the taking (retail, residential,

[10] The trial court's decision attributed this opinion to the "Michaud analysis." We presume that the court was referring to Michaud's testimony, which was the only source of such an opinion. The Michaud report did not express any opinion as to whether assemblage for redevelopment by someone other than the city was reasonably probable.

office) and the effect that the ballpark would have on those conditions. More important, unlike in *Towpath*, other support for this opinion existed in the record, on which the trial court was entitled to rely. See *Branford* v. *Santa Barbara*, 294 Conn. 785, 799 n.17, 988 A.2d 209 (2010) ("[W]e did not state in [a prior case] that the evidence testified to by the experts must in isolation support a trial court's determination that there is a reasonable probability that a property would be put to its highest and best use. On the contrary, the court was entitled to consider the testimony of [the experts] in the context of all the evidence presented at trial relevant to the proposed use of the property." [Emphasis omitted.]).

It is not purely speculative that someone other than the city would have used the assembled property for redevelopment. The DoNo proposal reflected its intention to effectuate such use. Its proposal expressed the view that north downtown was ripe for redevelopment. It bolstered that view with representations that it had secured letters of interest for the construction of a grocery store and a brewery in north downtown. The Mulready report prepared for the defendants confirmed that the construction of similar types of ballparks in other cities had sparked redevelopment. The fact that the trial court found the Mulready valuation too optimistic did not preclude its reliance on some of the subordinate facts on which that valuation was based. See *State* v. *Andrews*, 313 Conn. 266, 313, 96 A.3d 1199 (2014) ("[t]he trier of fact may credit part of a witness' testimony and reject other parts" [internal quotation marks omitted]).

The record also does not reflect that it is purely speculative that only the city would have made such an assemblage. Yeatman testified that, from the outset of CBV's purchase of the property, he had viewed the property best used as assembled with adjoining properties for development. He undertook substantial mea-

sures to eliminate every obstacle to assemblage. Although CBV's business plan indicated that the city was the most logical buyer to make this assemblage after the city purchased properties surrounding Parcel A, that plan preceded the disclosure of the plan to construct the ballpark. Notably, once armed with the relevant information, Yeatman made clear that, even if he were to sell Parcel A to the city, he intended to develop Parcels B and C on his own. In addition, Yeatman testified that, if he had been given a fair opportunity, he "[a]bsolutely" would have responded to the city's request for proposals for all or part of the plan. Yeatman's failure to produce a specific plan for redevelopment can reasonably be explained by the short window of time between the disclosure of the ballpark plan and the taking of the property, and the failed negotiations during the intervening period.

Moreover, the record lends strong support to the trial court's findings that Yeatman had both the expertise and the means to assemble and develop the property himself. Over Yeatman's career as a real estate investor, he had made investments for clients totaling five and one-half billion dollars. He had developed large projects across the country similar in scale and type to DoNo's proposal. Yeatman had financed the property with mortgages to afford him the option of either selling the parcels to other developers or contributing the parcels to a joint venture and being a codeveloper of them. He testified that he had secured two other investors for development of the property.

In jurisdictions in which common ownership is not required, the fact that the city owned the properties that would need to be assembled with the defendants' property would not preclude a finding that assemblage by someone other than the city was reasonably probable. See *Santa Clara* v. *Ogata*, 240 Cal. App. 2d 262, 268, 49 Cal. Rptr. 397 (1966); *Regents of the University of Minnesota* v. *Hibbing*, 302 Minn. 481, 486–87, 225

N.W.2d 810 (1975); *Clarmar Realty Co.* v. *Redevelopment Authority*, 129 Wis. 2d 81, 87–88, 383 N.W.2d 890 (1986); see also *United Gas Pipe Line Co.* v. *Becnel*, 417 So. 2d 1198, 1202 (La. App.) ("[t]he fact that the adjacent land is held in ownership by another party who may or may not want to sell is not determinative" [internal quotation marks omitted]) (quoting *State* v. *Long*, 344 So. 2d 754, 759 [Ala. 1977]), writ denied, 421 So. 2d 1124 (La. 1982). As one court explained: "Were we to permit entities planning to acquire a block or other area of land to do so piecemeal by purchase or condemnation and thereby adversely affect the value of the remaining parcels by thwarting any reasonable possibilities for assemblage, we would be permitting these entities to acquire land by condemnation without justly compensating the owners. The fact that a condemnor acquires various parcels of land by direct purchase rather than by condemnation should make no difference because of the [ever present] threat of eminent domain." *Regents of the University of Minnesota* v. *Hibbing*, supra, 486–87; see also *Almota Farmers Elevator & Warehouse Co.* v. *United States*, 409 U.S. 470, 480, 93 S. Ct. 791, 35 L. Ed. 2d 1 (1973) (Powell, J., concurring) ("[a]part from cases where . . . the [g]overnment has a property interest antedating but within the bounds of its present project, it would be unjust to allow the [g]overnment to use 'salami tactics' to reduce the amount of one property owner's compensation by first acquiring an adjoining piece of property or another interest in the same property from another property owner" [citation omitted]). The question is whether, despite the city's ownership of the adjoining properties, assemblage by the defendants or a third party for redevelopment was a reasonable probability sufficient to affect property values. See, e.g., *Santa Clara* v. *Ogata*, supra, 268; see also *Greystone Heights Redevelopment Corp.* v. *Nicholas Investment Co.*, 500 S.W.2d 292, 296–98 (Mo. App. 1973).

We conclude that the record supports the trial court's conclusion that there was such a probability. The city had no intention of retaining the properties adjoining the defendants' property. The city's properties were not intended for use by the public (i.e., a bridge, road, or hospital) but, rather, for commercial and residential development by a private developer. In its responses to questions submitted regarding its request for proposals to accomplish those development goals, the city indicated that it would be willing to consider proposals for smaller redevelopment plans that did not include the ballpark.

We also cannot ignore the fact that the trial court supported its adoption of the Michaud assemblage valuation by the per square foot price paid by the city for the two properties abutting Parcel A. Although this factor was not an independent ground for the trial court's conclusion, it clearly bolstered that conclusion. It is noteworthy that common sense alone would suggest that Parcel A would be considerably more valuable than either of the two properties abutting it because Parcel A had substantially greater Main Street frontage, directly across the street from the ballpark site.

Finally, we recognize that, at the time of the taking, there was no certainty that the ballpark would be constructed and, if constructed, whether it would be sufficiently successful to spark the hoped for redevelopment of north downtown. However, for such integrated use to be reasonably probable in the absence of condemnation, the possibility of assemblage must only be "considerable enough to be a practical consideration and actually to influence prices." *McGovern* v. *New York*, 229 U.S. 363, 372, 33 S. Ct. 876, 57 L. Ed. 1228 (1913); accord *Towpath*, supra, 255 Conn. 550. The assemblage need not occur imminently, but only in the "reasonably near future . . . ."[11] (Internal quotation marks omit-

[11] As one court explained: "The term 'in the near future' or even the term 'in a reasonable time' bear[s] no direct relationship to the ultimate subject

ted.) *Branford* v. *Santa Barbara*, supra, 294 Conn. 796. In light of the present record and the claims raised below, we do not have a definite and firm conviction that a mistake has been made in finding that assemblage for development was reasonably probable even in the absence of condemnation.

II

The city also claims that the trial court improperly awarded interest at the rate of 7.22 percent after it rendered judgment sustaining the defendants' appeal. According to the city, because the trial court did not set an interest rate in the judgment of compensation, the defendants are entitled only to the default rate of interest provided in § 37-3c. The city further asserts that the defendants were not entitled to offer of compromise interest because, if the default rate of interest properly had been awarded, the total compensation would not have exceeded their offer of compromise. In response, the defendants characterize the award as "postjudgment" interest and contend that it would be absurd to expect them to litigate the proper rate of interest before the court has rendered judgment as to the fair value of the property. We agree with the city.

The following additional procedural history is relevant to this issue. The trial proceedings and all posttrial/

under inquiry, i.e., the market value of the condemnee's land to the hypothetical willing buyer. To a literal-minded judge, the term 'near future' might exclude a rezoning that is unlikely for a two or three year period. To an astute investor, however, ten, fifteen or even twenty years might be considered 'in the near future,' or a 'reasonable time,' from the standpoint of investment objectives. One primary objective in a condemnation proceeding is to bring the values of the real-world marketplace into the courtroom. Yet a rule which commands a trial judge to exclude evidence of a rezoning which may take place beyond the judge's abstract notion of the 'near future' or a 'reasonable time' seems . . . to frustrate that goal.

"The far better rule . . . emphasizes the clause in the Nichols rule which states that '. . . such likelihood may be considered if the prospect of such (zoning change) . . . is sufficiently likely as to have an appreciable influence upon present market value.' " *Moschetti* v. *Tucson*, 9 Ariz. App. 108, 112–13, 449 P.2d 945 (1969), overruled in part on other grounds by *Tucson* v. *Rickles*, 15 Ariz. App. 244, 246, 488 P.2d 180 (1971).

prejudgment filings focused exclusively on the fair market appraisals of the property. The defendants did not raise the issue or present evidence related to the rate of interest. The trial court rendered judgment in favor of the defendants on December 5, 2016, finding that the property was worth $2,830,000 more than the amount paid by the city at the time of the taking. The trial court's decision contained no reference to an award of interest.

On December 20, 2016, the defendants filed a motion for an award of interest on the $2,830,000 from the date of the taking in 2014, through the December 5, 2016 date of judgment, citing General Statutes § 37-3a. The city opposed the motion on the grounds that (1) interest recoverable in a condemnation action is governed by § 37-3c, not § 37-3a, the latter governing interest in civil actions generally as damages for the detention of money after it becomes payable, and (2) pursuant to the terms of § 37-3c, the defendants were entitled only to the default rate of interest prescribed therein because the trial court had failed to set an interest rate in its judgment. At a hearing on the motion, the defendants conceded that § 37-3c is the controlling statute for interest in condemnation cases. Nonetheless, they argued that the court could set interest at the 10 percent rate set forth in § 37-3a as a "reasonable and just" interest rate under § 37-3c. To avoid an evidentiary hearing, the parties subsequently stipulated that, if the trial court were to conclude that it could set a "reasonable and just" interest rate after judgment had entered, then such a rate would be 7.22 percent.

The trial court granted the defendants' motion for an award of interest, ordering payment of interest at a rate of 7.22 percent. As a result, the total compensation award, including interest, exceeded the defendants' offer of compromise, and they thereafter successfully

moved for offer of compromise interest in the amount of $457,202.22.[12]

The issue before us raises a question of statutory construction. As such, we apply plenary review guided by settled principles of construction aimed at ascertaining legislative intent. See generally General Statutes § 1-2z; *Lieberman* v. *Aronow*, 319 Conn. 748, 756–57, 127 A.3d 970 (2015); *In re Tyriq T.*, 313 Conn. 99, 104–105, 96 A.3d 494 (2014).

The text of § 37-3c provides in relevant part: "The *judgment of compensation* for a taking of property by eminent domain *shall include* interest at a rate that is reasonable and just on the amount of the compensation awarded. *If a court does not set a rate of interest on the amount of compensation awarded*, the interest shall be calculated as follows . . . ." (Emphasis added.) Section 37-3c then prescribes calculation methods premised on the "weekly average one-year constant maturity yield of United States Treasury securities . . . for the calendar week preceding the date of taking," with additional interest awarded if the period from the date of the taking exceeds one year. Interest accrues from the date of the taking to the date of payment. General Statutes § 37-3c.

In our view, the statute unambiguously dictates that, when the "judgment of compensation" does not include a rate of interest, as in the present case, the default rate applies. There is simply no authority allowing the trial court to adopt another rate of interest. To conclude otherwise would render the second sentence of § 37-3c superfluous. See *Lopa* v. *Brinker International, Inc.*, 296 Conn. 426, 433, 994 A.2d 1265 (2010) ("[a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignifi-

[12] Had the default rate applied, the total compensation would not have exceeded the offer of compromise.

cant" [internal quotation marks omitted]). It appears that the legislature assumed that tying the default rate to the yield of variable securities would ensure a sufficiently reasonable and just rate.

The defendants make no argument that the statutory text reasonably can be read otherwise. Instead, they make various policy arguments as to why application of the default rule would yield absurd results. We are not persuaded.

The defendants' characterization of the interest at issue as "postjudgment interest" evidences a fundamental misunderstanding of the unique nature of the interest in a condemnation case. Although § 37-3c governs the rate of interest in condemnation cases, the right to the award of interest in such cases is constitutional, not statutory. *Leverty & Hurley Co.* v. *Commissioner of Transportation*, 192 Conn. 377, 380, 471 A.2d 958 (1984). As a consequence, "[a] landowner, if there is no fault for delay on his part, is entitled to interest to the date of payment *as a proper element of damages for the taking*." (Emphasis added.) *E. & F. Construction Co.* v. *Ives*, 156 Conn. 416, 420–21, 242 A.2d 768 (1968); see id., 420 ("[T]he fifth amendment [to the United States constitution] . . . requires the states to pay just compensation for private property taken for public use. . . . [J]ust compensation includes an additional sum which is an amount sufficient to produce the full equivalent of that value paid contemporaneously with the taking." [Citations omitted; internal quotation marks omitted.]).[13] Determining all components of compensa-

[13] The defendants have never advanced an argument that the default rate of interest under § 37-3c is constitutionally inadequate. See *E. & F. Construction Co.* v. *Ives*, supra, 156 Conn. 419–20 ("[a] statutory rule for compensation cannot be provided by the legislature which is less favorable than that required by constitutional mandate"). Accordingly, we have no occasion to consider the constitutional implications of application of the default rule. See *Statewide Grievance Committee* v. *Whitney*, 227 Conn. 829, 846, 633 A.2d 296 (1993) ("general rule against considering claims not raised at trial also applies to constitutional issues").

tion for the taking at the time of judgment is essential so that a reviewing court can adequately determine whether the compensation is just.[14] See *Laurel, Inc.* v. *Commissioner of Transportation*, 180 Conn. 11, 46–48, 428 A.2d 789 (1980) (evaluating rate of interest in context of all components of award of compensation). Therefore, the equitable determination of the rate of interest must be determined by the trial court at the time of the judgment of compensation. See, e.g., *Leverty & Hurley Co.* v. *Commissioner of Transportation*, supra, 379 (committee of state trial referees determined that plaintiff landowner was entitled to additional sum of $199,400 with "interest at the legal rate from the date of taking to the date of payment" [internal quotation marks omitted]).

We are not persuaded by the defendants' contention that condemnees must be able to seek interest postjudgment because it would be senseless to require a condemnee to present evidence regarding a reasonable and just rate of interest when the court has not yet found that the amount provided by the government at the time of the taking was inadequate.[15] The condemnee is free to seek bifurcation of the proceeding, first resolving the value of the property and then resolving the matter of a reasonable rate of interest. See Practice Book § 15-1; see also *Barry* v. *Quality Steel Products, Inc.*, 263 Conn. 424, 449, 820 A.2d 258 (2003) ("[b]ifurcation may be appropriate in cases in which litigation of one issue

[14] The defendants' addition of the amount of interest to the judgment of compensation as a basis to seek additional interest on the ground that the judgment exceeded the offer of compromise evidences that such interest is in fact an element of damages. They cannot have it both ways.

[15] For similar reasons, we disagree with the defendants' assertion that the award of a rate of interest is akin to an award of attorney's fees because the final award cannot be calculated at the time of judgment. Although the final *amount* of interest cannot be determined until the judgment of compensation as to the property value has been determined and payment has been made, the *rate* of interest can be determined before the judgment of compensation is rendered.

may obviate the need to litigate another issue" [internal quotation marks omitted]). In many cases, the rate of interest may be determined solely on the basis of documentary evidence and argument.

We also are not persuaded by the argument that if a trial court were to *inadvertently* fail to set a rate of interest at the time of judgment and thereby trigger the default statutory rate of interest, a condemnee would be without recourse. Our rules of practice permit a party, within four months of a judgment, to move to open the judgment when there is "a good and compelling reason for its modification or vacation." (Internal quotation marks omitted.) *Mazziotti* v. *Allstate Ins. Co.*, 240 Conn. 799, 809, 695 A.2d 1010 (1997); see Practice Book § 17-4 (a). Although the granting of a motion to open is within the discretion of the trial court; *Mazziotti* v. *Allstate Ins. Co.*, supra, 809; inadvertent failure to determine the reasonable rate of interest after this matter has properly been presented to the trial court might well qualify as a good and compelling reason to modify a judgment.

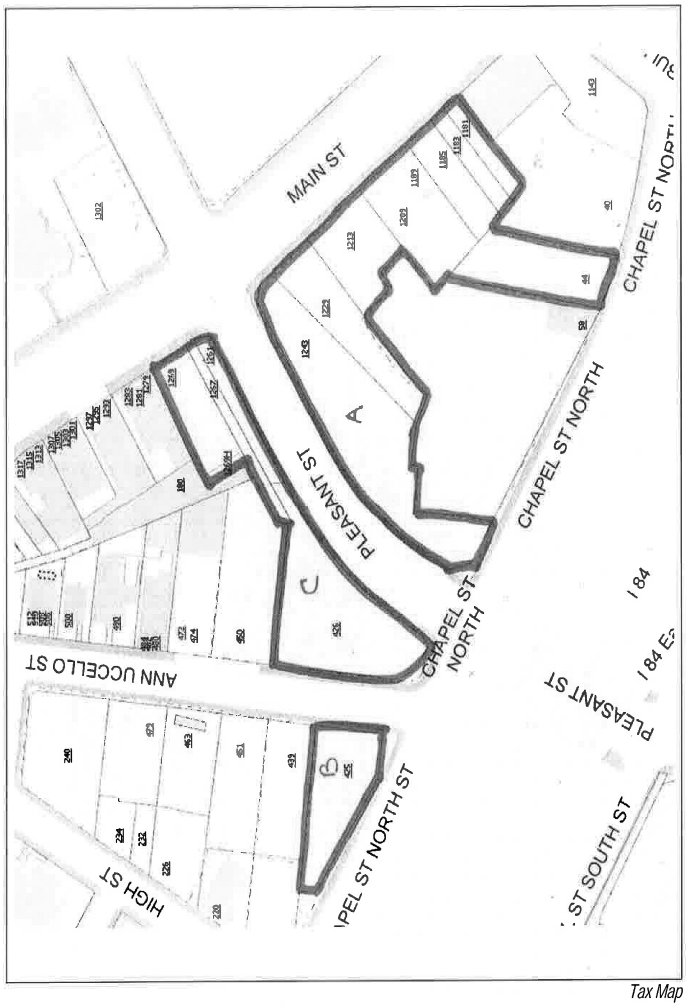
We conclude that the trial court lacked authority to set a rate of interest other than the default rate after it rendered its judgment of compensation. Therefore, the trial court improperly awarded interest at the rate of 7.22 percent rather than the default rate dictated by § 37-3c. As a result, the trial court also improperly granted the defendants' motion for offer of compromise interest. See footnote 12 of this opinion.

The judgment is reversed only as to the rate of interest and offer of compromise interest and the case is remanded with direction to award the default rate of interest under § 37-3c; the judgment is affirmed in all other respects.

In this opinion the other justices concurred.

APPENDIX

MAIN STREET, ANN UCCELLO STREET, & CHAPEL STREET NORTH PARCELS *HARTFORD, CT*



Tax Map

MICHAUD COMPANY *33*